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# TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1387. 938

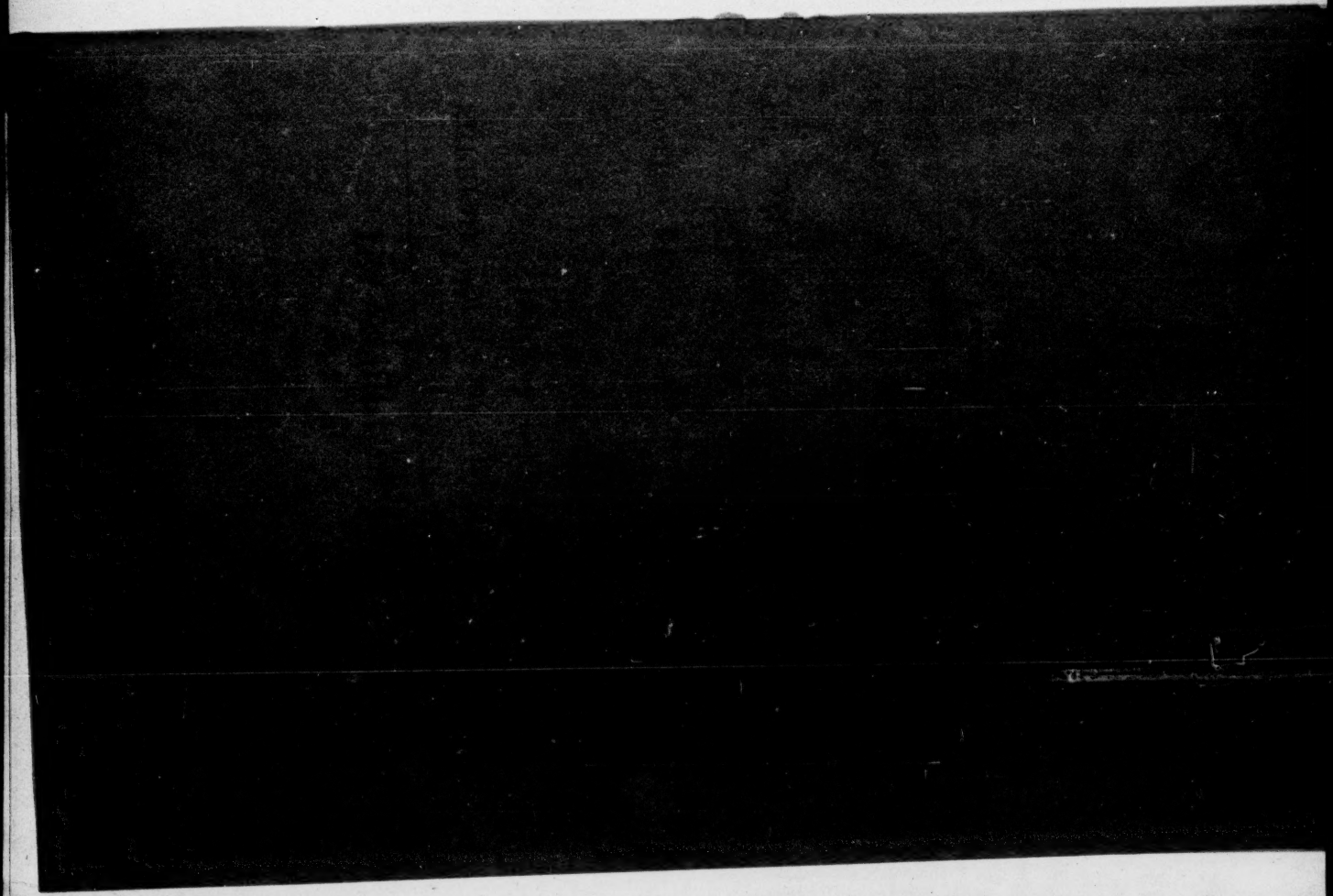
THOMAS F. BAYARD, SECRETARY OF STATE, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES EX REL. STEPHEN V. WHITE.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

**FILED MAY 4, 1887.**



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IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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INDEX.


| | Original. | Print. |
|---|---|---|
| Petition | 1 | 1 |
| Rule to show cause | 3 | 2 |
| Marshal's return | 4 | 2 |
| Demurrer | 4 | 3 |
| Submission of demurrer of defendant | 5 | 3 |
| Stipulation as to hearing on demurrer | 5 | 3 |
| Court proceedings | 6 | 4 |
| Answer and return of Thomas F. Bayard | 7 | 4 |
| Demurrer to answer | 9 | 5 |
| Court proceedings | 10 | 6 |
| Stipulation as to hearing | 11 | 6 |
| Writ of error and citation | 12 | 7 |
| Certificate to record | 14 | 8 |

1 In the Supreme Court of the District of Columbia.

*Transcript of Record.*

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|---|---|
| THE UNITED STATES, UPON THE RELATION OF Stephen V. White, plaintiff, *vs.* THOMAS F. BAYARD, SEC. OF STATE. | Petition for mandamus. At law No. 26871. Filed April 23, 1886. |

To the Supreme Court of the District of Columbia:

Your petitioner and relator now causes the court to be informed:

1. That under the joint convention between the United States and the Republic of Mexico concluded July 4th, 1868, such proceedings were had that an award was made to Mary Ann Conrow for $50,497.26, another to S. Kearny Parsons for $50,828.76, and a third to Sarah Mildred Standish for $42,486.30.

2. That afterwards and before the payment of any of said awards of any part thereof, this petitioner became and now is the assignee of one-half of each of said awards.

3. That the fact of this relator being such assignee was judicially determined by this court in general term in 1881, in the suits of Thomas P. McManus against Richard H. Porter and others in equity and afterwards in the cause of Richard H. Porter vs. Stephen V. White in equity decided in 1884, in the general term of this court.

4. That the Department of State has recognized this relator as such assignee upon full argument and hearing before the Secretary of State and has paid to this relator nine instalments hitherto paid by Mexico and distributed by the Secretary of State.

5. That on January 31, 1886, a tenth instalment was paid by
2 Mexico to the defendant as Secretary of State of the United States, and that the defendant has made a ratable distribution of said tenth instalment, having paid other claimants and especially said Parsons and Conrow and Standish the moieties which they had not assigned to this relator.

6. That by the first section of chapter 262 of the acts of the 45th Congress approved June 18th, 1878, it is made the duty of the Secretary of State to ratably apportion and to pay to the claimants or their assigns each instalment of money when received from Mexico.

7. That of the said tenth instalment there is due this relator on acct. of the Conrow award $1,806.06. On account of the Standish award $1,519.55, and on account of the Parsons award $1,817.92, which sums are specifically on hand, and the amounts have been computed and set apart by the proper auditing officers of the State Department.

8. That notwithstanding the judicial decision of this court and of the Department of State made by two predecessors of the said Bayard in the said office of Secretary of State the said defendant arbitrarily refuses to perform the duty imposed upon him by law, and to pay to this relator the said sums of money due and apportioned to him.

9. Wherefore your petitioner prays an alternative writ of mandamus and for the making thereof peremptory upon the hearing thereof, com-

manding the said defendant as Secretary as aforesaid to perform the duty imposed upon him by law, and to pay to your petitioner the moneys aforesaid due him.

S. V. WHITE,
*Petitioner and Relator.*

3 DISTRICT OF COLUMBIA,
*City of Washington, ss:*

Stephen V. White makes oath and says that the foregoing petition is true within his personal knowledge.

S. V. WHITE.

Sworn to and subscribed before me April 23, 1886.

R. J. MEIGS,
*Clerk.*
By R. J. MEIGS, JR.,
*Ass't Clerk.*

*Rule to show cause.—Filed April* 23, 1886.

In the Supreme Court of the District of Columbia.

THE UNITED STATES, EX REL. STEPHEN V. White,
*vs.*
THOMAS F. BAYARD, SECRETARY OF STATE. } No. 26871. At law.

Upon reading the petition for mandamus filed in the above entitled cause, and upon consideration thereof,

It is this 23 day of April, 1886, ordered that the defendant show cause on Monday, the 17 day of May, 1886, at 10 o'clock a. m., before the court in general term why the writ of mandamus should not issue as prayed, and it is further ordered that copies of this order and the petition filed herein be served on the defendant on or before the 26th day of April, 1886.

MACARTHUR.
*Justice.*

4 *Marshal's return.—Filed April* 23, 1886.

In the supreme court of the District of Columbia.

Served copies of petition and rule to show cause on James D. Porter, acting Secretary of State, this 24th of April, 1886.

A. A. WILSON,
*U. S. Marshal, D. C.*

PHILIPS.

*Demurrer.—Filed May* 17, 1886.

In the supreme court of the District of Columbia.

THE UNITED STATES EX REL. STEPHEN V. WHITE
*vs.*
THOMAS F. BAYARD, SECRETARY OF STATE. } At law, No. 26871.

The defendant, Thomas F. Bayard, says that the petition against him filed by the United States on the relation of Stephen V. White is bad in substance, in that it does not present any ground or warrant for issuing the writ of mandamus as therein prayed.

WM. A. MAURY,
*Assistant Attorney-General and of Coulsel for the Defendant.*

5 *Submission of demurrer of deft. on the part of the relator.—Filed Jun.* 9, 1886.

In the supreme court of the District of Columbia.

U. S. EX REL. STEPHEN V. WHITE
*vs.*
THOS. F. BAYARD. } 26871. Law. Gen. term. sup. ct., D. C. Mandamus.

Resisting the demurrer to the petition for mandamus the relator urges—
That the petition shows all the acts of a discretionary or judicial nature to have been done. He shows that—
1.—This court has held him to be the assignee.
2.—The State Department has so decided.
3.—The money awaits distribution in defendant's hands, even the computation of the moiety in each case having been made.
4.—The act of June 18th, 1878, directs the Secretary to pay this award:
Therefore, under cases Kendall vs. U. S. & U. S. vs. Schurtz the writ must issue.

S. V. WHITE,
*Relator.*

*Stipulation.—Filed Nov.* 15, 1886.

Supreme court of Dist. of Col., Oct. term, 1886.

U. S. EX REL. S. V. WHITE
*vs.*
THOS. F. BAYARD, SECRETARY OF STATE.

6 In this cause it is stipulated that the argument of Demurrer to petition for mandamus may be set down for Tuesday, Nov. 23d, at opening of Court or as soon thereafter as counsel may be heard.

S. V. WHITE,
*Relator.*

WM. A. MAURY,
*Ass't Atty. Genl., for defendant.*

FRIDAY, *February* 4, 1886.

Session resumed, pursuant to adjournment; present, Justices Hagner and James.

Supreme court of the District of Columbia.

| | |
|---|---|
| UNITED STATES EX REL. STEPHEN V. White, *vs.* SECRETARY OF STATE THOMAS F. BAYARD. | 26871. Law. |

In the above cause the argument of the demurrer to information is set down for hearing on February 15, 1887; and it is hereby ordered that it have precedence on that day over other business except any cause which may be on trial at the adjournment on February 14th.

By Mr. JUSTICE HAGNER,
*Presiding Justice.*

TUESDAY, *February* 15, 1887.

Session resumed, pursuant to adjournment; present, Justices Hagner and James.

| | |
|---|---|
| UNITED STATES EX REL. STEPHEN V. White, *vs.* THOMAS F. BAYARD, SECRETARY OF State. | At law, No. 26871. |

The hearing of this cause, which had been fixed for this day, is postponed to the 23d instant.

7 *Answer and return of Thomas F. Bayard, Secretary of State.—Filed Feb'y* 21, 1887.

In the Supreme Court of the District of Columbia, sitting in General Term.

The answer of Thomas Francis Bayard, Secretary of State, to the rule laid upon him by this honorable court to show cause why the writ of mandamus should not issue against him according to the prayer of the petition filed in this court by the United States on the relation of Stephen V. White.

This respondent answering saith that true it is that awards were made by the commission established by the treaty between the United States and Mexico of the 4th of July, 1868, for the amounts and in favor of the parties named in the said petition, and this respondent is advised that the said relator Stephen V. White doth claim an interest in the one-half part of each of the said awards, and this respondent doth admit that the rights and interests claimed by the said White as aforesaid were recognized by one although not recognized by another of the predecessors of this respondent and payments made to him accordingly, but this respondent saith that he finds it impossible, as the matter now stands, to recognize the claims

and pretensions of the said White to the moieties of the said awards without ignoring the conflicting claims and pretensions of a certain Richard H. Porter between whom and the said White litigation in respect to the said award is now and for a long time has been pending.

And this respondent further saith that he hath always been and is now willing to pay whatever sum or sums may be due on the said moieties out of moneys received, under the said treaty from the Republic of
8 Mexico, on an order and acquittance signed all the rival claimants of the said moieties, which your respondent respectfully submits is as much as could be done by him without embroiling the United States in a litigation in which it has no interest whatever.

And this respondent further answering saith that the several sums of money mentioned in said petition and claimed to be due and payable to the relator are held by him subject to the order and control of the President of the United States and are disposable by this respondent at the discretion of the President only, and that as this respondent is advised and believes there is no law, as hath been mistakenly supposed by the said relator, by which this respondent is invested with authority over the said sum of money independent of the President of the United States, and it being the opinion of the President that the public interests forbid the making of payments to the said relator in the present condition of things as hereinbefore set forth this respondent submits that he is not subject to the process of mandamus in the premises, and he, therefore, prays that he may be discharged from the said rule with his proper costs in this behalf sustained.

T. F. BAYARD.

DISTRICT OF COLUMBIA,
*Washington City, to wit:*

Personally appeared before me, a notary public in and for the District of Columbia, Thomas Francis Bayard, the respondent above named, and made oath that the matters and things stated in the aforegoing answer are true, in so far as stated as true, and that he believes them to be true in so far as stated on information and belief.

In witness whereon I have hereto set my hand and affixed my seal this 21st day of February, one thousand eight hundred and eighty-seven.

JOHN J. CHEW, [SEAL.]
*Notary Public.*

9 *Demurrer to answer.—Filed Feb'y* 21, '87.

In the Supreme Court of the District of Columbia.

THE UNITED STATES, EX REL. STEPHEN V. WHITE,
*vs.*
THOS. F. BAYARD, SEC. OF STATE.

The plaintiff demurs to the answer of the defendant as insufficient to bar the plaintiff's right to an peremptory writ of mandamus, for that,

1. It does not deny that the relator, S. V. White, is assignee of the moieties of the awards in controversy.

2. The President did not have any supervisory power under the act of

June 18th, 1878, except in the two cases named in the 5th section thereof, known as the La Abra and the West cases.

S. V. WHITE,
*Relator for the Plaintiff.*

10 WEDNESDAY, *Feb'y* 21, 1887.

Session resumed pursuant to adjournment—present, Messrs. Justices Hagner and James.

THE UNITED STATES, EX REL. STEPHEN V. WHITE,
*vs.*
THOMAS F. BAYARD, SECRETARY OF STATE. } At Law No. 26871.

Argued by relator in proper person, and by Mr. Maury, Ass't Att'y-General of the United States, on behalf of respondent, and decree directed to be prepared by counsel.

* * * * * * *

MONDAY, *March* 14, 1887.

Session resumed pursuant to adjournment—present Justices MacArthur, Hagner, and James.

* * * * * * *

UNITED STATES, ON THE RELATION OF STEPHEN V. WHITE,
*vs.*
THE SECRETARY OF STATE, THOMAS F. BAYARD. } Mandamus. 26871 at law.

This cause having been heard here in the first instance on the 23d Feb'y, 1887, was argued on behalf of the relator in proper person, and for the Secretary of State by Mr. Maury, Assistant Attorney-General, and submitted to the court; whereupon, because it appears to the court that the petitioner has made good his right to the writ of mandamus, as prayed, it is now for March 7th, 1887, considered that the writ be issued, commanding the Secretary of State to pay to relator, on account of the
11 several awards in the petition mentioned, to wit: On account of the Conrow award ($1806.06) eighteen hundred and six and .06 dollars; on account of the Standish award ($1519.55) fifteen hundred and nineteen and .55 dollars; and on account of the Parsons award ($1817.92) eighteen hundred and seventeen and .92 dollars; which sums are specifically on hand, computed and set apart by the proper auditing officer of the State Department; and that the plaintiff have recovery against respondent for its costs.

*Stipulation.—Filed March* 28, 1887.

In the supreme court of the District of Columbia.

UNITED STATES, EX REL. STEPHEN V. WHITE,
*vs.*
THOMAS F. BAYARD, SECRETARY OF STATE. } Mandamus.

*Stipulation.*

It is hereby stipulated that this case shall be heard and considered by the court as if an alternative writ of mandamus had been issued, and

served; and that an order to this effect shall be entered nunc pro tunc with the concurrence of the said court, this stipulation being in effect the same as the oral understanding made at the bar before the argument.

S. V. WHITE,
*Relator for Plaintiff.*
WM. A. MAURY,
*Ass't Att'y-Gen'l, and of Counsel for Defendant.*

12 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the chief justice and justices of the supreme court of the District of Columbia, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between the United States, ex relation Stephen V. White, and Thomas F. Bayard, Secretary of State, respondent, being law cause No. 26871, a manifest error hath happened, to the great damage of the said respondent as by his complaint appears; and it being fit that the error, if any hath happened, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf: Therefore, you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness, the honorable Morrison R. Waite, Chief Justice of the United States, this 22 day of March, in the year of our Lord 1887, and of the Independence of the United States the one hundred and eleventh.

R. J. MEIGS, *Clerk.*

DISTRICT OF COLUMBIA, *to wit:*

To STEPHEN V. WHITE, *Relator:*

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein Thomas F. Bayard is plaintiff and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, so that speedy justice be done the parties in that behalf.

Witness, D. K. Cartter, chief justice of the said supreme court of the District of Columbia.

D. K. CARTTER, *Chf. Just.*

13 UNITED STATES OF AMERICA, DISTRICT OF COLUMBIA, *ss:*

I, Stephen V. White, relator in the within named cause, do hereby accept service of the within citation on the 28th day of March, A. D. 1887.

S. V. WHITE,
*Relator, for Def't in error.*

14 *Authentication of record.*

[Clerk's certificate.]

CLERK'S OFFICE, SUPREME COURT OF THE DISTRICT OF COLUMBIA:

I, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witnsss my hand and the seal of said court this 2d day of May, 1887.

[SEAL.] R. J. MEIGS, *Clerk*,
By J. R. YOUNG, *Assistant Clerk.*

[Justice's certificate.]

I, E. F. Bingham, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 2d day of May, 1887.

[SEAL.] E. F. BINGHAM, *Chief Justice.*

[Clerk's certificate to justice's official character.]

I, R. J. Meigs, clerk of said court, hereby certify that E. F. Bingham, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 2d day of May, 1887.

[SEAL.] R. J. MEIGS, *Clerk*,
By J. R. YOUNG, *Assistant Clerk.*

(Indorsed on cover:) No. 1387. Thomas F. Bayard, Secretary of State, plaintiff in error, vs. The United States, ex rel. Stephen V. White. District of Columbia supreme court. Filed May 4, 1887.

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FILED
OCT 5 1887
JAMES H. McKENNEY
CLERK

# Supreme Court of the United States.

OCTOBER TERM, 1887.

THOMAS F. BAYARD, SECRETARY OF STATE, PLAINTIFF IN ERROR,
*vs.*
THE UNITED STATES *ex rel.* STEPHEN V. WHITE.
No. 938.

## Brief for the Plaintiff in Error.

WM. A. MAURY,
*Assistant Attorney-General.*

14 *Authentication of record.*

[Clerk's certificate.]

CLERK'S OFFICE, SUPREME COURT OF THE DISTRICT OF COLUMBIA:

I, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witnsss my hand and the seal of said court this 2d day of May, 1887.

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By J. R. YOUNG, *Assistant Clerk*.

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Witness my hand and the seal of said court this 2d day of May, 1887.

[SEAL.] R. J. MEIGS, *Clerk*,
By J. R. YOUNG, *Assistant Clerk*.

(Indorsed on cover:) No. 1387. Thomas F. Bayard, Secretary of State, plaintiff in error, vs. The United States, ex rel. Stephen V. White. District of Columbia supreme court. Filed May 4, 1887.

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# Supreme Court of the United States.

OCTOBER TERM, 1887.

THOMAS F. BAYARD, SECRETARY OF STATE, PLAINTIFF IN ERROR,
*vs.*
THE UNITED STATES *ex rel.* STEPHEN V. WHITE. } No. 938.

## Brief for the Plaintiff in Error.

WM. A. MAURY,
*Assistant Attorney-General.*

# Supreme Court of the United States.

OCTOBER TERM, 1887.

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THOMAS F. BAYARD, SECRETARY OF STATE, PLAINTIFF IN ERROR,
*vs.*
THE UNITED STATES *ex rel.* STEPHEN V. WHITE. } No. 938.

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## Brief for the Plaintiff in Error.

### THE CASE.

This is an application for a *mandamus* based on the following grounds:

1. That under the treaty with Mexico of 4th July, 1868, an award for $50,497.26 was made in favor of Mary Ann Conrow, and another for $50,828.76 in favor of S. Kearny Parsons, and a third for $42,486.30 in favor of Sarah Mildred Standish.

2. That the relator is the assignee of one-half of each of these awards.

3. That the fact of such assignment had been twice determined by the court below.

4. That the Department of State has recognized the assignments and paid the relator nine installments of said awards.

5. That on January 31, 1886, a tenth installment was paid by Mexico to the Secretary of State, which he has distributed, excepting the moities now claimed.

6. That by the first section of the act of Congress of June 18, 1878, it is made the duty of the Secretary of State to apportion ratably, and pay to the claimants, or their assigns, each installment of money received from Mexico.

7. That there is due relator $1,806.06 on account of the Conrow award, $1,579.55 on account of the Standish award, and $1,817.92 on account of the Parsons award; and that these sums are "on hand," and have been computed and set apart by the proper auditing officers of the State Department.

8. That notwithstanding the decision of the court below and of two of the defendant's predecessors, the defendant arbitrarily refuses to perform the duty imposed by law, to pay the relator the said several sums (*vide* petition, pp. 1, 2).

A rule to show cause was granted (p. 2).

The demurrer to the petition filed by the Secretary of State (p. 3) was afterwards overruled and supplanted by his answer to the rule (pp. 4, 5), which is as follows:

In the supreme court of the District of Columbia, sitting in general term.

The answer of Thomas Francis Bayard, Secretary of State, to the rule laid upon him by this honorable court to show cause why the writ of mandamus should not issue against him according to the prayer of the petition filed in this court by the United States on the relation of Stephen V. White.

This respondent, answering, saith that true it is that awards were made by the commission established by the treaty between the United States and Mexico of the 4th of July, 1868, for the amounts and in favor of the parties named in the said petition, and this respondent is advised that the said

relator, Stephen V. White, doth claim an interest in the one-half part of each of the said awards, and this respondent doth admit that the rights and interests claimed by the said White as aforesaid were recognized by one, although not recognized by another, of the predecessors of this respondent, and payments made to him accordingly; but this respondent saith that he finds it impossible, as the matter now stands, to recognize the claims and pretensions of the said White to the moieties of the said awards without ignoring the conflicting claims and pretensions of a certain Richard H. Porter, between whom and the said White litigation in respect to the said award is now and for a long time has been pending.

And this respondent further saith that he hath always been and is now willing to pay whatever sum or sums may be due on the said moieties out of moneys received, under the said treaty from the Republic of Mexico, on an order and acquittance signed by all the rival claimants of the said moieties, which your respondent respectfully submits is as much as could be done by him without embroiling the United States in a litigation in which it has no interest whatever.

And this respondent, further answering, saith that the several sums of money mentioned in said petition and claimed to be due and payable to the

relator are held by him subject to the order and control of the President of the United States, and are disposable by this respondent at the discretion of the President only; and that, as this respondent is advised and believes, there is no law, as hath been mistakenly supposed by the said relator, by which this respondent is invested with authority over the said sum of money independent of the President of the United States; and it being the opinion of the President that the public interests forbid the making of payments to the said relator in the present condition of things as hereinbefore set forth, this respondent submits that he is not subject to the process of mandamus in the premises, and he therefore prays that he may be discharged from the said rule with his proper costs in this behalf sustained.

T. F. BAYARD.

DISTRICT OF COLUMBIA,

*Washington City, to wit:*

Personally appeared before me, a notary public in and for the District of Columbia, Thomas Francis Bayard, the respondent above named, and made oath that the matters and things stated in the aforegoing answer are true in so far as stated as true, and that he believes them to be true in so far as stated on information and belief.

In witness whereon I have hereto set my hand and affixed my seal this 21st day of February, one thousand eight hundred and eighty-seven.

[SEAL.] JOHN J. CHEW,
*Notary Public.*

To this answer the relator filed the following demurrer (pp. 5, 6):

THE UNITED STATES *ex rel.* STEPHEN V. WHITE,
*vs.*
THOMAS F. BAYARD, SECRETARY OF STATE.

The plaintiff demurs to the answer of the defendant as insufficient to bar the plaintiff's right to a peremptory writ of mandamus, for that,

1. It does not deny that the relator, S. V. White, is assignee of the moieties of the awards in controversy.

2. The President did not have any supervisory power under the act of June 18, 1878, except in the two cases named in the fifth section thereof, known as the La Abra and the West cases.

S. V. WHITE,
*Relator, for the Plaintiff.*

The court being of opinion that upon the case presented the relator was entitled to a mandamus, accordingly so adjudged (p. 6).

## Error Assigned.

The judgment is assailed for error on the ground that no case for a *mandamus* is made in the record.

*ARGUMENT.*

It is respectfully submitted, that the judgment drawn in question by this writ of error is a serious blow leveled at the independence of the Executive, and cannot be sustained, it is conceived, without ignoring the great principle which governs, fundamentally, the relations between the departments which the Constitution makes the depositories of the whole grant of Federal power.

That principle, heretofore unchallenged, is that the legislative, the judicial, and the executive departments of the National Government stand towards one another in the relation of *co-ordination*, and not at all in the relation of subordination.

It may be truly said that the very foundations of the Government are laid in this principle, and that the continued success and stability of our

Federal polity depend on a religious adherence to it.

Some powers are required by the Constitution to be exercised by the President himself, and others he may exercise vicariously through such officers as may be provided by law.

Of the powers set down in the Constitution to be performed by the President not one can be delegated by him or by Congress. Of this class are the power to make treaties, in conjunction with the Senate, and the powers to be commander-in-chief of the Army and Navy.

Accordingly, we find that Congress has kept this distinction in view in prescribing the duties of the heads of the Departments of State, War, and the Navy.

It has declared with reference to the duties of the Secretary of State as follows:

> The Secretary of State shall perform such duties as shall, from time to time, be enjoined on or intrusted to him by the President relative to correspondences, commissions, or instructions to or with public ministers or consuls from the United States, or to negotiations with public ministers from foreign

states or princes, or to memorials or other applications from foreign public ministers or other foreigners, or to such other matters respecting foreign affairs as the President of the United States shall assign to the Department, and he shall conduct the business of the Department in such manner as the President shall direct. (R. S., § 202.)

It has declared, with reference to the duties of the Secretaries of War and the Navy, as follows:

The Secretary of War shall perform such duties as shall from time to time be enjoined on or intrusted to him by the President relative to military commissions, the military forces, the warlike stores of the United States, or to other matters respecting military affairs; and he shall conduct the business of the Department in such manner as the President shall direct. (R. S., § 216.)

The Secretary of the Navy shall execute such orders as he shall receive from the President relative to the procurement of naval stores and materials, and the construction, armament, equipment, and employment of vessels of war, as well as all other matters connected with the naval establishment. (R. S., § 417.)

But when Congress came to prescribe the duties of the Secretaries of the Treasury and the

Interior, the Postmaster-General and the Attorney-General, it specified what they should be, not being so straitly confined by the Constitution as it was in the cases of the three other Departments.

It is not denied that Congress may lay the heads of the State, War, and Navy Departments under determinate duties, amounting to commands to do certain things, but these must always relate to matters which Congress may, under the Constitution, commit to the hands of the officers last mentioned, and not, as in this case, as we shall show, to duties appertaining to the President alone.

This distinction is clearly pointed out by Chief Justice Marshall in his celebrated opinion in Marbury *v.* Madison (1 Cr., 137). He says:

> By the Constitution of the United States the President is invested with certain important political powers, in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character, and to his own conscience. To aid him in the performance of these duties he is authorized to appoint certain officers, who act by his authority and in conformity with

his orders. *In such cases their acts are his acts, and whatever opinion may be entertained of the manner in which executive discretion may be used, still there exists, and can exist, no power to control that discretion.* The subjects are political; they respect the nation, not individual rights, and being intrusted to the Executive, the decision of the Executive is conclusive. *The application of this remark will be perceived by adverting to the act of Congress for establishing the Department of Foreign Affairs.* This officer, as his duties were prescribed by that act, *is to conform precisely to the will of the President; he is the mere organ by whom that will is communicated. The acts of such an officer, as an officer, can never be examinable by the courts.* But when the legislature proceeds to impose on that officer *other duties;* when he is directed peremptorily to perform certain acts; when the rights of individuals are dependent on the performance of those acts, he is so far the officer of the law—is amenable to the laws for his conduct—and cannot, at his discretion, sport away the vested rights of others.

*The conclusion from this reasoning is, that where the heads of Departments are the political or confidential agents of the Executive, merely to execute the will of the President, or rather to act in cases in which the Executive possesses a constitutional or legal discretion, nothing can be more perfectly clear than*

> *that their acts are only politically examinable.* But where a specific duty is assigned by law, and individual rights depend upon the performance of that duty, it seems equally clear that the individual who considers himself injured has a right to resort to the laws of his country for a remedy (p. 166).

Coming now to the case in hand, what do we find? That on the 4th July, 1868, a convention was entered into between the United States and the Republic of Mexico (15 Stat., 679), the leading object of which was to provide an international tribunal or commission to adjudicate upon claims by citizens of one country against the other country.

As already stated, awards were made in favor of Conrow, Parsons, and Standish, each of whom has received his or her moiety of a ratable sum of each installment that has been paid by Mexico, and the relator has also received the moieties claimed by him as assignee of said parties out of nine of the installments paid by Mexico, but the Secretary of State has refused to pay him, for the reasons stated in his answer (*supra*), any part of the tenth installment, received in January, 1886.

As to the several sums withheld, the Secretary says in his answer (p. 5) that they "are held by him *subject to the order and control of the President of the United States*, and are disposable by this respondent *at the discretion of the President only*, and that, as this respondent is advised and believes, there is no law, as has been mistakenly supposed by the said relator, by which this respondent is invested with authority over the said sum of money independent of the President of the United States, and *it being the opinion of the President that the public interests forbid the making of payments to the said relator in the present condition of things*, as hereinbefore set forth, this respondent submits that he is not subject to the process of mandamus in the premises," &c., &c.

The money in question is clearly in the custody and keeping of the President of the United States, whose mere hand and vicar the Secretary is, by virtue of the Constitution and the law.

In receiving and holding the money the President acts in a political character under the direct authority of the Constitution, and it was impos-

sible for him to delegate to the Secretary of State any part of his duty touching the same.

Clearly, then, the Secretary of State cannot be liable to a mandamus to compel him to pay money *held by him as the mere agent of the President.*

It may be that at this very moment the President has removed the money out of the supposed custody and keeping of the Secretary of State, who, being wholly without power over the money thus removed, may be compelled to satisfy the judgment *de bonis propriis*, should the court allow it to stand.

It is not true that the act of Congress of the 18th June, 1878 (20 Stat., 144) has removed this case from the operation of the principles above set forth.

The contention of the relator is that this act is mandatory, that the Secretary shall pay the money claimed. But is that so?

The particular provision of the statute on which the relator rests his application for a *mandamus* is the first section, which is in these words:

> That the Secretary of State be, and he is hereby, authorized and required to receive any and all moneys which may be paid by the Mexican Repub-

lic under and in pursuance of the conventions between the United States and the Mexican Republic for the adjustment of claims, concluded July fourth, eighteen hundred and sixty-eight, and April twenty-ninth, eighteen hundred and seventy-six; and whenever, and as often as, any installments shall have been paid by the Mexican Republic on account of said awards, to distribute the moneys so received in ratable proportions among the corporations, companies, or private individuals respectively in whose favor awards have been made by said commissioners, or by the umpires, or to their legal representatives or assigns, except as in this act otherwise limited or provided, according to the proportion which their respective awards shall bear to the whole amount of such moneys then held by him, and to pay the same, without other charge or deduction than is hereinafter provided, to the parties respectively entitled thereto. And in making such distribution and payment, due regard shall be had to the value at the time of such distribution of the respective currencies in which the said awards are made payable; and the proportionate amount of any award of which by its terms the United States is entitled to retain a part shall be deducted from the payment to be made on such award, and shall be paid into the Treasury of the United States as a part of the unappropriated money in the Treasury.

To sustain the position of the relator it must be made to appear that Congress intended, by this section, to repeal, *by implication*, section 202 of the Revised Statutes (*supra*), and effect a fundamental change in the relations between the Secretary of State and the President by imposing on the former an absolute command to make payments irrespective of the latter's will, and without any attempt to make the Secretary the custodian and depositary of the money he is supposed to be ordered to pay.

The consideration that if Congress has laid the Secretary under an absolute duty to pay it has omitted to provide that the fund out of which the payments must be made shall be under his control, is alone enough to show that Congress had no such purpose.

But as there was no complaint of the Executive except in the cases of the Weil and La Abra awards, what motive had Congress for passing an indirect censure on the Secretary of State by invading his discretion and laying him under an absolute *command* as to the awards in general while in the same breath, ratifying the position

of the Executive touching the two awards just mentioned? it being clear that Congress and the Executive were moving in complete harmony and there being no reason for invidious interference by the former with the latter.

It cannot be supposed that Congress proposed in that indirect way to make a radical change, for the purposes of this particular class of cases only, in the relations of the President and the Secretary of State, which had subsisted uninterruptedly from the foundation of the Government down, and which had been carefully adjusted so as not to invade the province of the President.

It would seem very clear that the first section of the statute was not necessary. It was but in affirmance of what the Executive had been doing already, and merely declaratory of the sense of Congress on a subject appertaining to the Executive exclusively.

It is furthermore a very important consideration as to intention that the primary object of the statute was to appropriate the amount due by this country to Mexico, and to make certain

regulations touching the expenses of the Joint Commission. But for the exigencies calling for this legislation it would seem that Congress would have remained silent on the subjects of the first and fifth sections.

Again, repeals by implication are not favored, especially where an inferred intention to repeal would involve injustice and usurpation. In such cases, particularly, courts have gone a great way to avoid ascribing the implied purpose to repeal. Notable examples of this are to be found in the cases of Chew Heong *v.* The United States (112 U. S., 532) and Blake *v.* The United States (103 U. S., 227).

It is only where reconcilement between the earlier and the later laws *is impossible* that an intention to repeal will be implied in any case. (Red Rock *v.* Henry, 106 U. S., 596, *and the cases therein cited.*)

But, if the positions assumed above are not correct, the first section of the act of 1878 cannot have effect, because, if Congress intended thereby to take the control of the money paid and to be

paid by Mexico, out of the President's hands, or to lay the Secretary of State under an absolute duty to pay irrespective of the President's will, Congress has invaded the province of the President of the United States, and exceeded its constitutional powers.

The money paid by Mexico out of which the relator demands satisfaction, was paid necessarily into the hands of the President as the only organ of communication between this Government and foreign Governments, and there it remains at this moment, and there it was when the act of Congress was passed. What power, then, has Congress to issue a command to the Secretary of State, the mere agent of the President, to make a particular disposition of the money so paid?

NO CASE FOR A MANDAMUS.

It will not be pretended at this time of day that the judicial department of the Government can lay either of its co-ordinates, acting in its political character, under the stress of an interdict or a command (Mississippi *v.* Johnson, 4 Wall., 475; Georgia *v.* Stanton, 6 Wall., 50;

Gaines *v.* Thompson, 7 Wall., 347); but the learned court below seems to think that, after all, the judiciary may, by an indirection, intermeddle in matters of a political, executive character by assuming control over the officers made by law obedient to the President's will. The gravity of this case resides in the simple fact that the court below has put itself in the President's place and attempted to control the Secretary of State in a matter as to which that high officer has no power to move without the President's direction.

It is respectfully submitted that the judgment of the court below is a great stride in the direction of converting this Federal Government, despite its checks and compensations, into a government of the judiciary, thus tending to realize what has heretofore existed only in the heated imaginations of partisans.

But aside from the constitutional relations of this case, there are grounds on which the mandamus should have been denied.

The act of 1878 authorizes the Secretary of State to make payments to the parties in whose

favor the awards were made, "or their legal representatives or assigns." Now, manifestly, the Secretary, in carrying out this behest of Congress, has to exercise discretion. For he must not only be sufficiently assured as to the identity of the parties applying, but he must also (and hereupon the case partly turns) determine, on evidence, and generally a hearing, too, where the right lies as between several conflicting claimants to the same part of the fund to be distributed. For the purposes, then, of these distributions under the treaty, it is the judgment and discretion of the Secretary of State, supposing that officer to have an independent footing in the matter, and not the judgment and discretion of the supreme court of the District of Columbia, that the Congress has brought into requisition.

It is settled that *mandamus* is no remedy where it is sought to compel action as to a subject touching which the officer pursued has a discretion in matter of law or matter of fact, otherwise the discretion of the officer, which the law calls for,

would be supplanted by that of the court, which the law does not call for.

Now, the case here is, as unfolded in the Sectary's answer, that the relator and one Richard H. Porter are now, and for a long time have been, engaged in litigation over their "*conflicting claims and pretensions*" touching the moieties of the three awards now in question.

Out of comity to the courts, *and out of comity alone* (for it must be accepted as law that the head of a Department, as such, cannot be drawn aside from his functions and embroiled in suits between private parties, but, if so minded, may go right on regardless of such suits), the Secretary has been awaiting a period to this litigation.

It is entirely beside the case to ask what is the nature of the controversy involved in the litigation between the rival claimants, *and no discovery in that regard is demandable anywhere*, for there exists nowhere an appellate revisory jurisdiction over the Secretary.

It was sufficient to arrest the hand of the court below to have been certified, as that court was

under the oath of the Secretary, that he was perplexed by antagonistic claims. To have laid bare, in his response to the rule, the nature of the controversy between the relator and Porter would have answered no practical end, except in the view of the court below, which seemed to think that the Secretary's reasons for withholding action in the premises could not be good and sufficient unless, upon scrutiny, they should find them good in their own eyes also—a pretension which must, *in logical necessity*, go hand in hand with another, equally extravagant, namely, the claim to overlook and direct the Secretary of State in the discharge of *all* his duties as the organ of the President of the United States!

As will appear by reference to the opinion of the court below (*vide* Appendix), the judgment to be reviewed is founded entirely on a supposed resemblance between this case and that of Marbury *v.* Madison. But there is no resemblance whatever between the cases, with the greatest respect be it said.

In Marbury *v.* Madison the facts were that, upon Mr. Jefferson's first accession to the Presi-

dency, there lay in the Department of State certain undelivered commissions of officers who had been appointed by Mr. Adams in the last hours of his term of office as President. It was these commissions of the midnight appointees, as they were called by way of opprobrium, as to which the Executive was absolutely *functus officio*, unless we adopt the position of Mr. Jefferson, founded on a false analogy, that the delivery of the commission conveys title to the office, it was these commissions, we say, that Mr. Madison withheld. The appointments were *all complete*, said this court, *before Mr. Adams retired*, and *the whole* that remained to be done by Mr. Madison, as Secretary of State, was to hand over the evidences of the official acts—the commissions—a duty which was purely ministerial.

But in the case at bar the act which the judgment commands the Secretary to do is one that directly appertains to the President, *and which the President has forbidden the Secretary to do.*

The court below fails to see, certainly it gives no attention to the subject, that the Secretary of State holds a peculiar relation to the President

touching the money in question, and can have no independent footing with regard to it. It *assumes*, following literally the first section of the act of 1878, and its own *obiter dictum* on that section in a previous case which arose on the fifth section of the act entirely, it *assumes*, we say, that the fund in dispute is in the keeping and under the control of the Secretary of State, thus avoiding the gravest question in the case by a *petitio principii*.

And this position of the court below is all the more remarkable, since, in commenting on section 202 R. S., declaring the duties of the Secretary of State, in U. S. *ex rel.* Angarica *v.* Bayard (4 Mackey, 310), which was an application for a mandamus to compel the Secretary of State to pay the increment of interest on certain money paid by the Government of Spain to meet claims of American citizens against that Government, the court in denying the writ held a view which is precisely in unison with what we have advanced in support of this writ of error. Its words are:

> Under this statute it is his duty, in the conduct of every matter which constitutes a part of "the

business of his Department," to act "in such manner as the President shall direct," and it appears that every transaction connected with foreign intercourse, which the President shall assign to the State Department, is a part of its business in which he is so to act. If, then, the receipt from Spain and the payment over to the respective claimants of the moneys awarded by the commission are acts done by the Secretary of State in his official capacity—and it is only in such case that he could be subject to a writ of mandamus—it is because that matter has been made by the President a part of the business of his Department. It follows that this official duty must be performed "in such manner as the President shall direct." Now, it has been decided by the Supreme Court of the United States that the action of the heads of Executive Departments in matters which the President is authorized to direct must be presumed to have been directed by him. We must therefore presume that the Secretary of State has acted by the specific direction of the President in the decision complained of by the petitioner. Whatever might be thought of the propriety of such directions, the Secretary has, in that case, done simply what the law required him to do. In other words, having been directed by the President not to pay to the petitioner the interest derived from the investment of these moneys, it was, so far as

> he was concerned, his legal duty not to pay them. It may be added that this presumption of direction by the President is not, in a transaction of such character and importance, merely a theory. As a matter of fact, such business is conducted with his actual concurrence. (Pp. 319, 320.)

It may be proper to observe that in that case the unsuccessful party, after sleeping on his rights for a considerable time, has just sued out a writ of error, to which he was no doubt prompted by the inconsistency between the views of the court in that case and the case at bar.

We do not deny, as the learned court seems to think, that the Secretary of State may, in a proper case, make himself liable to a *mandamus*, as Mr. Madison did, but we do deny that he can ever come under any such liability in respect of a matter to which he must, under the Constitution, hold the relation of the mere organ of the President.

It was because Mr. Madison's refusal to deliver the commissions was contrary to the President's solemn command, witnessed by his sign manual and the great seal, that this court held him liable to be coerced by judicial process, and it is re-

markable that the court below failed to see the distinction between Mr. Madison's conduct and that of Mr. Bayard.

Upon similar reasoning a *mandamus* was allowed in the case of U. S. *v.* Schurz (102 U. S., 378), this court holding that every political, executive act involved in the proceeding of granting public land by patent having been performed, the jurisdiction of the Department of the Interior in that particular case had been exhausted, and that nothing remained to be done but to deliver the patent, the evidence of the title which had already vested.

In the view of the learned court below this case stands in the same attitude as it would if the Secretary had admitted that he held the money and that it belonged to the relator.

The Secretary says, in his answer, that he finds it "impossible, as the matter now stands, to recognize the claims and pretensions of the said White to the moieties of the said awards *without ignoring the conflicting claims and pretensions of a certain Richard H. Porter, between whom and the said White*

*litigation in respect to the said award is now, and for a long time has been, pending,*" and that he is willing to pay the money claimed on an acquittance "*signed by all the rival claimants of the said moieties,* which your respondent respectfully submits is as much as could be done by him *without embroiling the United States in a litigation in which it has no interest whatever*" (p. 5); and it might have been supposed, *a priori*, that, this much given, the court would have dismissed the application.

But no, the court says that the answer of the Secretary is wanting in certainty and particularity; that it does not disclose the grounds on which the rival pretensions of Porter rest. And to what end is this particularity required? Why, plainly, that the court might rejudge the Secretary's judgment, as has been said already.

That this was the idea in the court's mind is shown by the observation in the opinion that the answer of the Secretary "*would be faulty even as an answer in chancery or in any ordinary legal proceeding,* since it does not meet directly several of the material averments of the petition," thus try-

ing the sufficiency of the answer to the rule in a mandamus case by the same tests as are used in cases where the court has authority to adjudge and determine a question of conflicting claims and, as ancillary to that authority, the right to compel a full discovery touching the same.

May we be permitted to say that the action of the court below in foreclosing the Secretary upon what it deemed *an insufficient discovery*, appears to be very summary? Regard being had to the dignity of the office of the respondent and the entire absence of any handle to suspect a purpose to evade or obstruct the course of justice, it was to be expected that the learned court would give the Secretary an opportunity to protect the public interests by amending his answer.

As it was impossible for the counsel for the Government to get access to the opinion of the court, although he made repeated applications for it, until after the close of the term at which the judgment was rendered and after the writ of error had been sued out, no application to the court for leave to amend was made because no

necessity for such an application was known to exist.

But it was not admissible for the court to determine the case on the point of the supposed insufficiency of the answer, because the case was argued on the relator's demurrer to the answer, which is restricted to two specifications or grounds, the insufficiency of the answer not being one of them (p. 5), and the averment as to Porter's conflicting claims being therefore admitted. The relator having confined his demurrer to these two distinct grounds, viz, that "it [the answer] does not deny that the relator, S. V. White, is assignee of the moieties of the awards in controversy," and that "the President did not have any supervisory power under the act of June 18th, 1878, except in the two cases named in the 5th section thereof, known as the La Abra and the West [Weil?] cases" (p. 5), the court, we repeat, had no right to go beyond the demurrer and decide the case on a point raised by itself and not made or hinted at in the argument, but, on the contrary, involving a matter

which was a *concessum* in the argument; namely, that Porter's claim covered the very moieties in question here.

We must be permitted to say that the action of the court below, in deciding the case upon a supposed insufficiency of the answer and a consequent want of knowledge on the part of the court touching the conflicting claims of Porter, was extraordinary. The case of Porter was freely and fully alluded to by the relator in his argument, and it was seriously insisted by him that the litigation between him and Porter was no excuse in the Secretary's mouth, because Porter who had been cast had appealed to this court without making his appeal a *supersedeas*, albeit that appeal *is yet to be heard and determined here*, standing number 221 on the docket of this term.

It now remains to notice the observation of the court below that, inasmuch as this court, in the case of Frelinghuysen *v.* Key (112 U. S.), *which, it will be observed, turned entirely on the fifth section of the act of* 1878, failed to overrule or notice the *obiter dictum* of the court below in that case, that the *first* section of the act was manda-

tory that the Secretary of State should pay, the silence of this court must therefore be taken as importing its full acquiescence in that *gratis dictum!* It is sufficient to collate this doctrine by the following words of Chief Justice Marshall:

> "It is a maxim not to be disregarded that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case they may be respected, but ought not to control the judgment in a subsequent suit where the very point is presented for decision. The reason of this maxim is obvious. The question actually before the court is investigated with care, and considered in its full extent. Other principles which may serve to illustrate it are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated." (6 Wh., 399, Cohens *v.* Virginia.)

It is respectfully submitted that the judgment should be reversed and the case remanded, with instruction to the court below to dismiss the petition.

WM. A. MAURY,
*Assistant Attorney-General.*

# APPENDIX.

## Supreme Court of the District of Columbia. General Term.

THE UNITED STATES *ex rel.* Stephen V. White,
*vs.*
THOMAS F. BAYARD, SECRETARY of State. } At Law. No. 26,871.

[Decided March 14, 1887. Justices Hagner and James sitting.]

1. Where an act of Congress imposes upon an officer of the Government a purely ministerial duty, upon the performance of which depend the rights of individuals, it is no sufficient answer, on a *mandamus* proceeding against him, to set up a contrary direction by the President.
2. The decision in Angarica de la Rua *v.* Bayard, 4 Mackey, 310, is to be understood as relating solely to the facts of that case.
3. When money is in the custody of the Department of State to which the petitioner has a clear right, and by an act of Congress the Secretary is directed to pay it over to him, *mandamus* will lie to compel its payment.
4. The return by a defendant in *mandamus* must deny with distinctness and certainty the material averments of the petition; otherwise they will be taken as true.
5. Except as to the Weil and La Abra claims, the distribution in ratable proportions of the money due to claimants or their assigns under the awards of the Joint Mexican and American Commission is, by the act of June 18, 1878, made a purely ministerial duty on the part of the Secretary of State, and such as this court will enforce by *mandamus*.

Petition for *mandamus* certified to be heard in the general term in the first instance.

The facts are stated in the opinion.

Stephen V. White, *pro. per.*, for relator.

Wm. A. Maury, Assistant Attorney-General, for respondent.

Mr. Justice Hagner delivered the opinion of the court.

The petitioner asks that a *mandamus* may issue directing Mr. Bayard, the Secretary of State, to pay over to him a sum of money which he alleges he is entitled to receive as assignee of certain claims adjudicated and allowed under the Joint Mexican and American Commission.

1. The principal defense made to this application by the Secretary is one which, if allowed, would not only be decisive of this case, but would be fatal to any claim of authority in this court hereafter to issue a *mandamus* against the Secretary of State in his official capacity in any matter whatever, without respect to the question whether the duty sought to be enforced is merely ministerial, or one discretionary in its nature. The Secretary presents this defense in the following language:

"And this respondent, further answering, saith that the several sums of money mentioned in the petition, and claimed to be due and payable to the relator, are held by him subject to the order and control of the President of the United States, and are disposable by this respondent at the discretion of the President only; and

that as this respondent is advised and believes there is no law, as hath been mistakenly supposed by the said relator, by which this respondent is invested with authority over the said sums of money independent of the President of the United States; and it being the opinion of the President that the public interests forbid the making of payments to the said relator, in the present condition of things as herein before set forth, this respondent submits that he is not subject to the process of *mandamus* in the premises; and he therefore prays that he may be discharged from the said rule, with proper costs in his behalf sustained."

But for the earnestness with which this defense has been urged by the assistant attorney-general in behalf of one of the highest officers of the Government, and especially of his further contention that his position is supported by a decision of this court recently rendered in a case in which the same official was the defendant, we should have contented ourselves with a simple reference to the decision of the Supreme Court of the United States, announced eighty-four years ago in the case of Marbury *v.* Madison, 1 Cranch, 163, as a sufficient refutation of the contention.

But, under the conditions to which I have adverted, it is perhaps proper and respectful that something more should be said to show that we have no alternative but to adhere to the position which we conceive has been thus so long settled.

The facts of this case, which is as familiar to the bar as any in the whole range of jurisprudence, were these:

Shortly before Mr. Adams retired from the office of President he had signed a number of commissions for justices of the peace within this District, some of which had not been received by the persons for whom they were intended; but after Mr. Jefferson was inaugurated they were found by Mr. Madison in the office of the Secretary of State. The President ordered the Secretary not to surrender them, and thereupon Marbury, whose commission was withheld under this order, filed a petition for a *mandamus* in the Supreme Court of the United States alleging his demand and the refusal by the Secretary under the President's orders to perform what he averred to be a mere ministerial duty, and insisting that he had a right to have its performance enforced by *mandamus* from that court.

The case was elaborately argued and considered in all its relations, and the writ was refused upon the ground that the Supreme Court possessed no original jurisdiction in the case. But the court entered upon an elaborate discussion of all the points raised, and (among others) of this very question whether, in the case of a plain ministerial duty, the Secretary of State was amenable to the process of *mandamus;* and they decided unequivocally that he was.

I shall read a few sentences from the opinion for the reasons I have stated.

Much stress had been laid, in the argument in that case, upon the peculiar language of the section of the

act of 1789, establishing the Department of State, which, as was also urged in the argument before us, committed no authority to the Secretary of State, except in subordination to the orders of the President.

The Chief Justice, in reply to this argument, says:

"By the Constitution of the United States, the President is invested with certain important political powers, in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character, and to his own conscience. To aid him in the performance of these duties, he is authorized to appoint certain officers, who act by his authority, and in conformity with his orders.

"In such cases their acts are his acts; and whatever opinion may be entertained of the manner in which Executive discretion may be used, still there exists, and can exist, no power to control that discretion. The subjects are political. They respect the nation, not individual rights, and being intrusted to the Executive, the decision of the Executive is conclusive. The application of this remark will be perceived by adverting to the act of Congress for establishing the Department of Foreign Affairs. This officer, as his duties were prescribed by that act, is to conform precisely to the will of the President. He is the mere organ by whom that will is communicated. The acts of such an officer, as an officer, can never be examinable by the courts.

"But when the legislature proceeds to impose on that officer other duties; when he is directed peremptorily to perform certain acts; when the rights of individuals are dependent on the performance of those acts, he is so far the officer of the law—is amenable to the laws for

his conduct, and cannot at his discretion sport away the vested right of others.

"The conclusion from this reasoning is, that where the heads of Departments are the political or confidential agents of the Executive, merely to execute the will of the President, or rather to act in cases in which the Executive possesses a constitutional or legal discretion, nothing can be more perfectly clear than that their acts are only politically examinable. But where a specific duty is assigned by law and individual rights depend upon the performance of that duty, it seems equally clear that the individual who considers himself injured has a right to resort to the laws of his country for a remedy."

And again: "But, if this * * * be no intermeddling with a subject over which the Executive can be considered as having exercised any control, what is there in the exalted station of the officer which shall bar a citizen from asserting, in a court of justice, his legal rights, or shall forbid a court to listen to the claim, or to issue a *mandamus* directing the performance of a duty, not depending on Executive discretion, but on particular acts of Congress and the general principles of law?"

"If one of the heads of Departments commits any illegal act, under color of his office, by which an individual sustains an injury, it cannot be pretended that his office alone exempts him from being sued in the ordinary mode of proceedings, and being compelled to obey the judgment of the law. How, then, can his office exempt him from this particular mode of deciding on the legality of his conduct, if the case be such as would, were any other individual the party complained of, au-

thorize the process? It is not by the office of the person to whom the writ is directed, but the nature of the thing to be done that the propriety or impropriety of issuing a *mandamus* is to be determined. Where the head of a Department * * * is directed by law to do a certain act affecting the absolute rights of individuals, in the performance of which he is not placed under the particular direction of the President, and the performance of which the President cannot lawfully forbid, and therefore is never presumed to have forbidden; * * * in such cases, it is not perceived on what grounds the courts of the country are further excused from the duty of giving judgment that right be done to an injured individual, than if the same services were to be performed by a person not the head of a Department."

The language of the statutes creating others of the Executive Departments, and apparently subordinating their actions to the will of the President, does not differ substantially from that used with respect to the Department of State. Such is the case with reference to the Department of War, of the Navy, and of the Treasury; but the writ has repeatedly been issued from this court, against those officials, in matters ministerial, without a word from the Supreme Court, in disapproval of a jurisdiction which since the case of Kendall *v.* U. S., 12 Pet., 610, has been recognized as one of the flowers of our court. In the latter case Mr. Justice Thompson, speaking for the Supreme Court, says:

"There are certain political duties imposed upon many officers in the Executive Department, the dis-

charge of which is under the direction of the President. But it would be an alarming doctrine that Congress cannot impose upon any executive officer any duty they may think proper, which is not repugnant to any rights secured and protected by the Constitution; and in such cases the duty and responsibility grow out of, and are subject to, the control of the law, and not to the direction of the President."

In that case the granting of the writ had been resisted upon the ground of want of authority in the courts of the District, but not because of any distrust in the soundness of the general principles announced in Marbury *v.* Madison; and it may not be out of place to quote the following from the report of the argument of Mr. Attorney-General Butler in that case, as evincing the understanding of a distinguished lawyer of that decision:

"And as the ordinary character of an officer's functions would not always determine the true nature of a particular duty imposed by law, he further agreed that if an executive officer, the head of a Department, or even the President himself, were required by law to perform an act merely ministerial, and necessary to the completion or enjoyment of the rights of individuals, he should be regarded *quoad hoc*, not as an executive, but as a merely ministerial officer; and therefore liable to be directed and compelled to the performance of the act by *mandamus*, if Congress saw fit to give the jurisdiction." 12 Pet., 596.

Since 1803 the decision has stood undisturbed, as settled law. It is true it has been criticised, upon the

ground that the court had declared itself without jurisdiction to issue the writ; and this was one of the reasons given by Mr. Jefferson in his letter of June 2, 1807 to George Hay, the prosecuting attorney in the trial of Burr, why he thought "it material to stop at the threshold, the citing of that case as authority, and to have it denied to be law."

But in U. S. *v.* Schurz, 102 U. S., 395, the Supreme Court, in awarding a *mandamus* against the Secretary of the Interior to deliver a land patent to the patentee, notices this suggestion in these words: "If the relator was entitled to the possession of the patent as his property and it was the plain duty of the Secretary to deliver it to him when demanded, then, under all the authorities, and especially the decisions of this court, he is entitled to the remedy he asks." From the case of Marbury *v.* Madison (1 Cranch, 137) down to the present time, such has been the settled doctrine of this court. And though it may be said that the opinion of Chief Justice Marshall in that case was not necessary to the decision made, which was that this court had no original jurisdiction in that case, the principles of the opinion have since been repeatedly recognized and acted upon in this court, and the case cited with approval in its definition of the circumstances under which persons holding public offices will be compelled to perform certain duties which are merely ministerial. (Kendall *v.* U. S., 12 Pet., 524; Decatur *v.* Paulding, 14 Pet., 497.)

The decision has been equally followed by the courts of the different States, even where the proceedings were against the highest State officials, to compel the performance of ministerial duties. In Magruder *v.* Swann (25 Md., 173) where the writ was ordered against the governor, the whole subject was reviewed, and the more prominent State decisions are cited.

It would, therefore, have been impossible for this court to have held a contrary doctrine; and whatever language was used in the case of U. S. *ex rel.* Angarica de la Rua *v.* Bayard, Mackey, 310, referred to by the defendant, must be understood as relating solely to the facts of that case.

It is well settled that no *mandamus* can be issued against a public officer, unless the party applying shows a clear legal right to the relief claimed; and also that there exists a clear legal duty on the part of the official to perform the ministerial function involved.

In the case in 4 Mackey, 310, neither of these essential prerequisites of jurisdiction appeared. Under a convention between the United States and Spain, a large sum had been awarded to Angarica de la Rua for losses sustained by him at the hands of the authorities in Cuba, which was paid over by Spain to the Secretary of State. This officer paid over to the claimant the amount so received, except about $41,000, which he retained until the Spanish Government should make provision to pay the expenses of the arbitration. Several

years afterwards the Secretary paid over the sum so retained in full, but refused to pay to the claimant an amount of interest which had been realized from the investment of the sum, made by the Secretary's order while awaiting the action of the Spanish Government. To compel the payment of this interest the *mandamus* was applied for; but it was refused by this court, as it appeared that the retention of the $41,000 by the Secretary, and its investment, and the earning of interest on the fund, were all equally without law, but were mere voluntary acts of the Secretary; that the unchangeable practice of the Government is not to pay interest upon claims and that there could be no element of contract in the transaction; and hence, however equitable might be the petitioner's claim to the interest, it could not be enforced at law.

2. The next inquiry is whether the relator has shown a clear legal right to the fund he claims.

He avers under oath the allowance by the mixed commission of the claims of Conroy and others; that afterwards and before the payment of any of the awards, he became and still is the assignee of one-half of each; and he proceeds:

"That the fact of this relator being such assignee was judicially determined by this court in general term in 1881 in the suits of Thomas P. McManus against Richard H. Porter and others, in equity, and afterwards in the case of Richard H. Porter and others, in equity, decided in 1884 in the general term of this court.

"That the Department of State has recognized this relator as such assignee, upon full argument and hearing before the Secretary of State, and has paid to this relator nine installments hitherto paid by Mexico and distributed by the Secretary of State.

"That on January 31, 1886, a tenth installment was paid by Mexico to the defendant, as Secretary of State of the United States, and that the defendant has made a ratable distribution of said installment, having paid other claimants, and especially having paid said Parsons and Conroy and Standish the moiety which they had not assigned to this relator.

"That by the first section of chapter 262 of the acts of the Forty-fifth Congress, approved June 18, 1878, it is made the duty of the Secretary of State to ratably apportion and to pay to the claimants or their assigns each installment of money when received from Mexico.

"That of the said tenth installment there is due this relator, on account of the Conroy award, $1,806.06; on account of the Standish award, $1,519.55; and on account of the Parsons award, $1,817.92; which sums are specifically on hand, and the amounts have been computed and set apart by the proper auditing officers of the State Department.

"That notwithstanding the judicial decision of this court and of the Department of State made by two predecessors of the said Bayard in the said office of Secretary of State, the said defendant arbitrarily refuses to perform the duty imposed upon him by law, and to pay to this relator the said sums of money due and apportioned to him."

This constitutes unquestionably a statement of a clear legal right. If he is the assignee, and the money is in the custody of the Department, and by the statute the Secretary is directed to pay it over, after it has been set apart for the assignee, then undoubtedly the petitioner has a right to demand its payment.

The case is heard here upon the agreement of the litigants that the answer of the Secretary is, in all respects, to be considered as though it were a return to an alternative *mandamus* already issued; and the court has considered the case throughout according to the terms of this stipulation.

The reply to the allegations of the petition is thus stated in the return:

"This respondent, answering, saith that true it is that awards were made by the commission established by the treaty between the United States and Mexico on the 4th day of July, 1868, for the amounts and in favor of the parties named in the said petition; and this respondent is advised that the said relator, Stephen V. White, doth claim an interest in the one-half of each of said awards; and this respondent doth admit that the rights and interests claimed by the said White, as aforesaid, were recognized by one, although not recognized by another, of the predecessors of this respondent, and payments made to him accordingly. But this respondent saith that he finds it impossible as the matter now stands to recognize claims and pretensions of the said White to the moieties of the said awards, without ignoring the conflicting claims and pretensions of a certain

Richard H. Porter, between whom and the said White litigation in respect to the said award is now, and for a long time has been, pending.

"And this respondent further saith that he hath always been and is now willing to pay whatever sum or sums may be due on the said moieties out of moneys received under the said treaty from the Republic of Mexico, on an order and acquittance signed by all the rival claimants of the said moieties; which your respondent respectfully submits is as much as could be done by him without embroiling the United States in a litigation in which it has no interest whatever."

Is this such a return to the supposal of the petition as would disentitle the plaintiff to the writ?

The well-settled rules of the common law on the subject of *mandamus* have not been modified by statute in this jurisdiction.

In Harwood *v.* Marshall (10 Md., 463) the court states with much fullness the principles by which the sufficiency of a return should be tested, and that case affords so clear an illustration of the manner in which we should examine that before us that we shall quote from it at length. The facts of that case were these:

The Maryland legislature had elected Marshall State librarian, and the incumbent, Harwood, refused to give up the office. Marshall applied for a *mandamus* to compel its surrender; and the court below ordered a peremptory writ. In the court of appeals it was insisted that the court below erred in ordering the *mandamus*

because the return sufficiently denied the statement of fact upon which the petitioner relied as the ground of his right. The appellate court says:

"In this State the proceedings in *mandamus* in such a case as the one before us are governed entirely by the rules and principles of the common law. The office in question is a public office, and not within the provisions of the statute of 9 Anne, chap. 20, nor of the act of assembly of 1828, chap. 78.

"If the return state upon its face, with precision and certainty, facts which are sufficient in law to justify the court in refusing the writ, the facts alleged are not traversable; and whether they be true or false, the return is conclusive, and the writ is denied. The only remedy, if the facts alleged in the return be untrue, is by action on the case for a false return. (1 Harr. & J., 557.)

"Such is the ancient and well-settled principle of the common law governing this case, and remaining to this day unaltered by any statutory enactment in Maryland.

"In the excellent treatise of Tapping on Mandamus, page 353, it is said: 'The averments of the return must be certain. The certainty required by the common law is, by some of the cases, stated to have been certainty to every intent, and therefore greater certainty than is requisite to a plea. Other cases have decided that a certainty or strictness which prevailed at common law was the same as that which governed estoppels, indictments, or returns to writs of habeas corpus, and as to them it is laid down that nothing is to be taken or construed by intendment or inference, so that all material facts should be positively and distinctly alleged.' * * *

"If the return deny the supposal of the writ, the traverse must be single, direct, and certain. The rule being that every distinct and material allegation contained in the writ must, if it be intended to contradict them, be traversed.

"The question in considering the sufficiency of a return by way of traverse must be whether, if the supposal of the writ be true and sufficiently averred, an action for a false return can be certainly maintained against the defendant; or, in other words, if the facts averred in their return, strictly construed as stated, may be true consistently with the truth of the suggestion of the writ, then the return is vicious.

"Let us apply these rules to the case before us: The facts stated in the writ are, that the petitioner 'hath taken and subscribed the oaths of office, as prescribed by the Constitution and laws for the State librarian.'

"The traverse in the return is as follows: 'This respondent knows nothing of the qualification of the said Marshall, to the said office of State librarian, saving and excepting from the pretenses of the said Marshall, as set forth by him in these proceedings, and saving and excepting also, that, from an inspection of the books in the office of the governor of the State, it appears, and this respondent so avers the fact to be, that the said Marshall did not take and subscribe the oaths of office, required by the Constitution and laws to be taken and subscribed by him before the governor of the State, in manner and form as directed by the Constitution and laws.'

"This is not a good traverse. First, it is evasive, in not denying in direct terms, on the solemn oath of the

respondent, the fact alleged in the writ; expressly disclaiming all knowledge of the fact, except from what is alleged, and from what appears from an inspection of the books in the office of the governor, the averment amounts to no more than an allegation of a fact derived from the inspection of the books; or if this be not the true construction, the averment is at least ambiguous in its terms, the words, 'and this respondent so avers the fact to be,' are susceptible of being construed to refer either to the *qualification* itself, or *to what appears from the books* of the governor; and in this view it is bad as wanting the requisite certainty. If the defendant were sued for a false return, the latter construction might be insisted on, with great force, in defense of the action."

And as the court held that those denials were not sufficient to break the force of the averments in the petition, which were therefore to be taken as established, they ordered the peremptory writ to issue.

Tested by this reasoning, it is perfectly plain that the answer in the present case is entirely insufficient. It would be faulty even as an answer in chancery, or in any ordinary legal proceeding, since it does not meet distinctly several of the material averments of the petition. It does not deny that the relator is the assignee, although it admits that he claims an interest in one-half of the fund. The nearest approach to a denial of White's right as assignee is the statement that the respondent finds it impossible to recognize White's claims without ignoring the conflicting pretensions of Porter,

between whom and the said White it avers that litigation in respect to the award is, and for a long time has been, pending.

Litigation in what way? It is not averred that Porter claims as assignee; for all that appears in the return he may claim only as a creditor of White or of the original assignors. It does not deny that White's claims as assignee have been adjudicated by this court, in cases decided upon hearings in which some of the justices who unite in this judgment participated. Nor does it allege in any way that there has been an appeal from those adjudications, or that a *supersedeas* has been obtained to tie the hands of White and prevent him from claiming his money at once. The reference to Porter's "claims and pretensions" cannot be considered as equivalent to a denial that White is the assignee, or that any one else claims to be such assignee.

The answer does not deny that the particular sums have been set apart in the Department to be paid upon the moieties assigned to White; or that the Department had already paid him the dividends from the nine previous installments received from Mexico by the Secretary of State. At the best, each of the denials or averments is vague and uncertain. If an action were brought against the Secretary as for a false return in respect to these several statements in the answer, how could it be successfully contended that the answer denied the material supposals of the petition with such certainty as to sustain the action, when it is quite clear

that it has not denied either of them with the directness, singleness, and certainty required by the law of *mandamus?*

We are clearly of the opinion that as the answer does not deny with proper certainty the material averments of the petition, they must therefore stand as established, and as presenting a clear legal right to the money claimed.

3. The next inquiry is whether the function to be exercised by the Secretary is a ministerial duty. That would seem to be plain enough. The first section of the statute of June 18, 1878, authorizes and requires the Secretary of State to receive and distribute in ratable proportions, to the claimants or their legal representatives or assigns, each of the installments which shall have been paid by the Mexican Republic.

This section of the statute was before this court in the case of U. S., Key *v.* Frelinghuysen, 2 Mackey, 301.

That was an application for a *mandamus* against Secretary Frelinghuysen, to require him to pay over a part of an award which had been made in what was known as "the Weil claim" arising under this commission, but which the fifth section of the act authorizes the President to withhold, if he should see fit, under certain circumstances. This court first speaks of the claims in general, which were not excepted in section 5, and says:

"If the act had stopped here, there would have been a plain ministerial duty created by it, for the benefit of

the parties in whose favor the awards were made, admitting of no exercise of discretion, and proper to be enforced by *mandamus* if its performance was refused."

The act did stop there, so far as the present case is concerned, for this is not one of the cases excepted by section 5. But the particular case under consideration in 2 Mackey was one of two claims named in that section, which Congress thereby requested the President to investigate, and authorized him, in case he should be of the opinion that the charges of fraud presented as to those claims were well founded, or that other considerations therein referred to rendered it proper, in his opinion, that the case should be retried, to withhold payment of the awards.

The obvious design of this exception in the fifth section was to vary the general rule which applied to all claims not therein named; and as to those two claims, to confer upon the President a discretion which he was not to possess with reference to the claims not so excepted; otherwise, the provision in the fifth section would not have been necessary.

Although the Supreme Court held that the discretionary power created by section 5 still continued, it said nothing inconsistent with the declaration of this court as to the nature of the duty devolved upon the Secretary of State, with respect to the claims in general. It, therefore, remains as a valid decision of this court that (except as to the Weil and La Abra claims)

the payment of the money by the Secretary of State, to the claimants and their assigns, under these awards was purely a ministerial duty, and such as this court could enforce by *mandamus*.

4. Only one point remains. Has this claimant any other reasonable or attainable remedy? Plainly not. This is his only mode of obtaining his money, and if relief is denied him here he would be indeed remediless in the premises, and that deplorable result would ensue which Chief Justice Marshall, in Marbury *v.* Madison, declared would expose to obloquy our system of jurisprudence—that a suitor with a plain right to redress should be powerless to obtain it from the courts, because his rights are withheld by a powerful officer of a Government created for his protection.

We think it is our plain duty to direct that a peremptory *mandamus* shall issue, as prayed; and it is so ordered.

127-246

OCT 8 1887

# Supreme Court of the United States.

**OCTOBER TERM, 1887.**

*No. 938.*

THOS. F. BAYARD, SECRETARY, PLAINTIFF IN ERROR,

*vs.*

UNITED STATES, *ex rel.* STEPHEN V. WHITE.

**BRIEF FOR THE DEFENDANT IN ERROR.**

S. V. WHITE,
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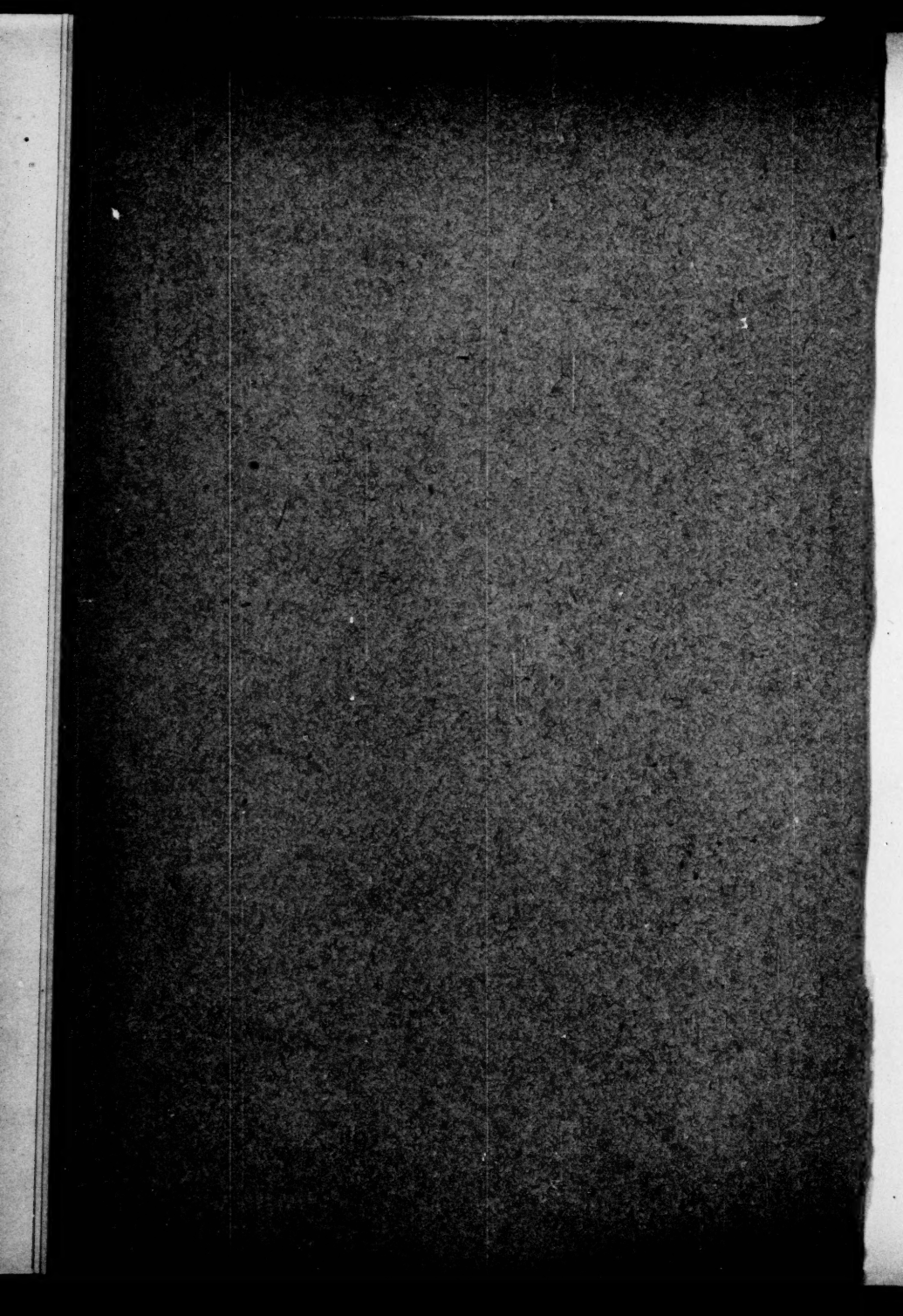

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The relator for the defendant in error respectfully submits, in support of the judgment of the court below—

1. There is absolutely no confusion, as shown by the records, between the Secretary's duties as diplomatic agent of the Executive and his duties as trustee for a specific fund as shown by the relation.

The Secretary of State is not asked by the relator or commanded by the Court to perform any act in which Mexico is interested or the official relations of the two Republics are involved.

He is asked and commanded to pay three certain computed amounts, then in his hands, to the relator, (who is admitted to be the assignee), under the express wording of the act of June 18th, 1878, which imposes upon him the simple administrative act of making such payment.

All the diplomatic and political measures between the two Republics had been accomplished prior to the passage of the act of June 18th, 1878. Portions of the moneys agreed between the Republics to be due from Mexico to the United States for the benefit of certain of her citizens, were then in the Secretary's hands and were being received under the treaty in yearly instalments of $300,000 per annum.

In respect to such moneys—mere trust funds in the Secretary's hands—the Congress directed the Secretary as trustee to proceeed to make disbursements *pro rata* to the claimants, their legal representatives, and assigns.

And that the duties of the Secretary might be wholly free from doubt as to whether his act was to be purely ministerial or of a political character the Congress provided by the fifth section of the act of June 18th, 1878, that in two cases (the La Abra and the Weil awards) that the President might retain a discretion as to payment by the Secretary.

If the position of the plaintiff in error is correct, what need was there that Congress should enact the fifth section giving such discretion to the Chief Magistrate?

The maxim of the civil law, "*expressio unius est exclusio alterius*," as applied to statutes, makes the will of the Legislative body most clear. The principle is laid down in Broom's Legal Maxims in these words:

"Where a general act of Parliament confers immunities which expressly exempt certain persons from the effect and operation of its provisions, it excludes all exemptions to which the subject might have been before entitled at the common law; for the introduction of the exemption is necessarily exclusive of all other independent extrinsic exceptions."

Applied to this case the principle enunciated is that even though under section 202 Revised Statutes the Secretary might have refused to act in the payment of the awards because in the opinion of the President "the public interests forbid the making of the payments to the relator," yet inasmuch as there was an expression of such authority to withhold payments under the cases named in the fifth section of the act there was an exclusion thereof in all other cases.

Of course the relator denies that without the fifth section such construction would have been correct, but with it, under the authorities cited in Broom's Legal Maxims, pages 664 to 666, such a construction is absolutely inadmissible.

2. It is conceded what the principle of the right to a mandamus is. Let us further apply the principle to this case in the light of the precedents.

In Marbury *vs.* Madison, 1 Cr., 137, President Adams had appointed Marbury a justice of the peace, and at the expiration of his presidential term the commission had not issued. President Jefferson held the opinion "that the public interests forbid" the issuance of the commission, and Secretary Madison would not sign it. And this court held that in that case Secretary Madison "was not the confidential agent of the President;" but that the unfinished business of the State Department required the performance by the Secretary of the issuance of a commission, because it was a specific duty assigned by law, and that individual rights depended upon the performance of that duty, and held that mandamus would properly lie to compel the performance of the administrative act.

In the case at bar it is not denied by the plaintiff in error, that the relator is the assignee of the award. It is admitted in this answer that the State Department has so held and has undertaken a continuing act to make payments to him as such assignee; that it has discharged that administrative duty nine times, and now this *ex officio* trustee of a legislative trust feels that he should decline the discharge of his duty, because the President thinks public interests forbid his performing it.

3. The relator denies the proposition, as stated on the 13th page of the Attorney General's brief, that "the money in question is clearly in the custody and keeping of the President of the United States, whose hand and vicar the Secretary is." On the contrary he asserts that the money is in the Treasury of the United States to the credit of the Secretary of State, and that as to any of said money, except the percentages under the La Abra and the Weil awards the President has no more control than he has of money due for interest to the holder of a Government bond.

4. Nor is it necessary, under the interpretation of the court below, to repeal by implication section 202 of the Revised Statutes, as stated on page 16 of the brief of the Attorney General. So far from that, the well-known principle of giving full effect to two statutes, unless they are plainly in conflict, makes it the duty of the court to give effect to both statutes unless absolutely incompatible in their terms.

Section 202 provides that he shall conduct the business of

the Department in such manner as the President shall direct. The act of June 18th, 1878, provides that he shall receive $300,000 as paid yearly by Mexico; that he shall consult the President as to the percentages due the La Abra and the Weil claimants, and pay without discretion to himself or the President, ratably, all other claimants or their assignees.

The Revised Statutes, section 202, said to the Secretary: Conduct the business of your Department as the President may direct. The act of June, 1878, enlarged his duties and said to him: Receive certain payments as trustee and pay the same to the owners, but obey the President's directions as to two claimants.

But if it is not a proper construction to permit the repeal of section 202, Revised Statutes, by the act of 1878, how perfectly absurd it would be to hold that the words in that section which make it the duty of the Secretary to conduct the business of the Department in such manner as the President shall direct, should be held to annul and make void the statute of 1878?

The relator has yet to learn that a subsequent statute, plain in its terms, shall be deemed repealed or abrogated by a prior one.

5. The statement on the 17th page of brief is not warranted by law or fact where the learned Attorney General says that the first section of Statute, June, 1878, was not necessary, as it was but in affirmance of what the Executive had been doing already. An award of $300,000 was paid by Mexico January 31st, 1877, and a like award January 31, 1878, but neither the President, nor the Secretary of State, nor the Secretary of the Treasury, nor all combined, had the power

to get a cent of it out of the Treasury until the act of June 18th, 1878, made the Secretary of State trustee and directed him as to the mode of its distribution, and then, for the first time, was any of the money paid to the claimants of the awards.

6. It is not necessary to follow the various arguments founded on this fallacy of the plaintiff's brief. The Joint Convention was silent as to the officer who should receive the money from the debtor Republic. In point of fact it was paid to the Secretary of State and placed in the Treasury, where it must of necessity remain until paid out in pursuance of law, and the only law passed in reference thereto was the law of June 18th, 1878.

7. The learned Attorney General seems to grieve over the fact that he did not have the opinion of the Court below in time to amend his answer; but as there is a presumption that he answered fully under oath, and there is no statement of plaintiff in error, or the Attorney General, in what particulars he could have amended it, to make it stronger probably this Court will not share in that grief.

8. Relator submits, that nothing could add to the strength of his claim for the performance of this administrative duty. He shows the rendition of the award. The answer admits it. He shows that he is assignee of moiety of each. The answer does not deny it. That the fact of his being such assignee was *res adjudicata* in the State Department, on which judgment the Secretary has nine times acted. The answer admits it. That the money was on hand,

computed and set apart for relator, and that all other claimants had been paid their ratable proportion. The answer does not deny it. And the sole reason for the non-peformance of his duty was that a stranger to the record was in litigation with the assignee about it, and that the President therefore, deemed that the *public interests* forbid its payment.

I submit that there was no error in the judgment of the court below.

S. V. WHITE,
*Relator in Person.*

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OCT 10 1887
JAMES H. MCKENNEY
CLERK

# SUPREME COURT OF THE UNITED STATES.

T. F. BAYARD, *Secretary of State*,

*vs.*

UNITED STATES, *Ex Rel*, S. V. WHITE.

**Brief of W. Hallett Phillips.**

For Defendant in Error

R. O. POLKINHORN, PRINTER.

# SUPREME COURT OF THE UNITED STATES.

T. F. BAYARD, *Secretary of State*,

*vs.*

UNITED STATES, *Ex Rel*, S. V. WHITE.

**Brief of W. Hallett Phillips.**

In answer to the application for a mandamus, the Secretary insists that the money in his hands and claimed to be due the petitioner on account of the awards of the United States and Mexican Commission, is held by him subject to the order and control of the President, and is disposable by the respondent at the discretion of the President only.

In other words, it is contended that the award creates no private right that is not subject to the action and control of the Executive.

This contention raises the important question as to the character of the petitioner's right.

We submit that, before adjudication by the commission, his claim against Mexico constituted property, capable of transfer or assignment. This, after full discussion, was decided in *Comegys* vs. *Vasse*, 1 Pet., 193. This court, quoting from Chief Justice KENT, say:

"If France should at any future period make compensation for the capture and condemnation in question, the Government of the United States, to whom the compensation would in the first instance be payable, would become trustee for the party having the equitable title to the reimbursement."

The same matter was considered in *Erwin* vs. *United States*, where it is said:

"Whether a party has been deprived of his goods by the Government, rightfully or wrongfully, does not affect the character of the claim as property, though it may effect its validity and value.

"Claims for compensation for the possession, use, or appropriation of tangible property constitute personal estate equally with the property out of which they grow, although the validity of such claims may be denied, and their value may depend on the uncertainty of litigation, or the doubtful result of an appeal to the legislature." 97 U. S., 392. (See also *Phelps* vs. *McDonald*, 99 U. S., 298; *Judson* vs. *Corcoran*, 17 How., 712.)

Here the claim has been merged in the judgment of a tribunal partly organized by the debtor government, and this is a final judgment solemnly so declared by the convention.

The judgment constitutes property in the fullest sense, entitling the petitioner to the protection and guarantees of the Constitution, though he had no means of enforcing it had Mexico failed to provide for its payment.

The respondent admits that he has received from Mexico the means of paying this judgment, and the question is whether any exercise of the Executive power over the Secretary shields him from the process of mandamus.

In other words, is the duty required of him ministerial merely?

What that duty is has been prescribed by an act of Congress. But if no act directing payment by him had been passed, we should be able, we think, to maintain, on principle, and the practice of the Government, that mandamus would lie to compel payment.

The treaty is a law unto itself; and when, under its provisions, the Secretary receives the means of paying the awards made under it, there arises an implied agreement that he will pay them, and this payment is a ministerial duty.

Secretary Evarts applied to Congress for the passage of the act which he drafted and transmitted, on the construction of which this controversy partly depends. In his letter he said:

"No doubt the prompt distribution of money awarded to our citizens, and paid over to the Government of the United States for that purpose, is an obligatory duty which this Government should be most anxious to discharge. * * *

I have hesitated to make distribution of the money on hand, which would be according to the practice of the Government, because of some legislation being necessary to make good to the fund the amount with which the Government of the United States is chargeable, and because it is desirable that the manner of the reservation of the expenses of the Government should be settled."

H. R. Rep. No. 27, 45th Cong., 2d Sess., p. 9.

The act of July 4, 1868, regulates the duty of the Secretary in reference to these awards.

By the first section he is required to receive the moneys paid by the Mexican Republic under the

stipulation of the treaty, and distribute the sum in rateable proportions to those in whose favor awards have been made, or to their legal representatives and assigns.

Accordingly the payments were made by Mexico to the Secretary and receipted for by him.

Message of the President, Ex. Doc. 103, H. R., 48 Cong., 1 Sess., p. 158.

Can it be successfully denied that the act confers a ministerial duty on the Secretary enforceable by mandamus?

It is said that the duty of the Secretary is executive and not ministerial.

This objection was taken in *Marbury* vs. *Madison*, and overruled.

"Where the heads of departments (say the court) are the political and confidential agents of the Executive, merely to execute the will of the President, or, rather, to act in cases in which the Executive possesses a constitutional and legal discretion, nothing can be more clear than that their acts are only politically examinable. But when a specific duty is assigned by law, and individual rights depend upon the performance of that duty, it seems equally clear that the individual, who considers himself aggrieved, has the right to resort to the laws of his country for a remedy."

It was, consequently, held in this case, that the President could not authorize the Secretary of State to omit the performance of those duties enjoined by law.

1 Cr., 137.

This is repeated in Kendall's case.

12 Pet.; 524.

There is nothing in *Decatur* vs. *Paulding*, 14 Pet., 497, in conflict with these views; on the contrary, they are affirmed, and the case shows the difference between executive and ministerial duties.

The extent of the Executive control over the awards of international commissions, was passed on by the highest law officer of the Government, in Gibbs' Case. An award had been made by a commission under a treaty with New Grenada. Under a new arrangement the Executive attempted to set it aside. The right to so deal with the award was the question before the Attorney General.

As to this, he said:

"I cannot assent to the view that this Government could affect his rights under the convention by submitting his case to the second board, or that the board was able to divest those rights by any action upon the claim, under the submission of our Government against his will, and without his consent." 13 Opinions Atty's Gen., 19.

And as to the payment of the award, he said:

"Such payment to our Government, was, of course, intended to be in trust for the parties whose claim should be satisfied." Id., 32.

In an opinion delivered in 1843, Attorney General Legare uses this language:

"The question whether a particular claim of a citizen of one country against the government of another, is or is not valid as against that government, is undoubtedly submitted to the special jurisdiction created by the treaty.

"But to whose benefit is the judgment to enure, when satisfied by that government? This, you at

once perceive, is quite a different matter, and falls within the usual sphere of the judicial power of the country receiving the indemnity. That either A, B, or C, is entitled to be paid, on a specified claim against a foreign government, such a sum, is an international or political matter. By the very fact, therefore, that it is so, it is to be adjusted by treaty—in some way to be pointed out by treaty, or it must become the object of war or reprisals. No nation can be held responsible in any other way. As soon, however, as the claim is admitted as a debt, and paid by one country to the other in trust for its subjects, it ceases to be a political subject, and becomes a judicial one. The execution of this trust is as much within the competency of the ordinary tribunals as that of any other. The government is a mere stakeholder for the use of those who are really entitled to the proceeds paid over under the treaty." 4 Opinions Atty's Gen., 177.

The argument now made by the Secretary, supposes that there exists in the government a propriatory right to the money awarded on account of private claims by an international commission. In other words, that the awards do not constitute matters of private right, but can be dealt with by the Executive according to its own discretion and pleasure.

This argument finds no support in the decisions of the court to which we have referred, nor in the practice of the government. If it is sound, it places our citizens who have reclamations against a foreign government in a very unsatisfactory position.

Their demands for compensation can only be enforced through the medium of our own Government Their enforcement is a duty which our Government owes to its own citizens. An international tribunal

is organized through the offices of our Government for the determination of the claims. To that tribunal the claimant, through the medium of this Government, is obliged to present his claim or have it barred. The claim is accordingly presented, and the evidences of the foreign indebtedness surrendered and filed in the court.

The result is an award against the foreign Government on account of such claim, and the debtor is discharged by the payment to our Government of the amount of the judgment.

If the contention of the Secretary is correct, the claimant may stand in a worse position after the award than he occupied before the presentation of his claim. All his rights against the foreign Government were merged in the award—the debtor was discharged by its payment, but the creditor finds he has no remedy in the courts of the country to compel payment over to him of the money awarded. He ascertains that the money is in the possession of the officers of our Government, who can exercise their discretion as to its disposition. In short, he finds that the money belongs to the Government, and not to him.

This result has followed from the mere fact of the presentation of the claim by our Government and the receipt by its officers of the money from the debtor Government in discharge of the judgment.

Is such, in point of law, the position of the parties and the character of the right?

We submit that the private right of the claimant continues after the award, as to the proceeds of the judgment.

It was *his* claim that our Government presented to

the court; judgment was in *his* favor; the money was paid by the debtor for *his* benefit, and we maintain that the officers of our Government, who received it, were his trustees.

The opposing argument, sacrifices substance to form. It supposes that because our Government presents the claim and receives payment, that it has a proprietory interest in, and an unrestrained power of disposition over, the proceeds.

In our estimation the case would not have been any different had Mexico paid over the amounts due by her to an agent of her own for distribution among those having awards against her.

Surely, in such a case, the Executive could not have asserted any right over the fund.

Now, what substantially took place as to the award in question?

It so happened that Mexico had claims to prosecute on behalf of its own citizens against the Government of this country. It accordingly stipulated as to the mode of payment, that the amount, in gross, awarded on behalf of the citizens of the one country should be deducted from the amount awarded to the citizens of the other country, and the balance paid to the government in favor of whose citizens the greater amount was awarded, to be distributed by it.

This was a mode of payment adopted for convenience, and it did not alter the rights of the private litigants. Had the Commission only possessed jurisdiction of claims of citizens of the United States against Mexico, and accordingly awards had only been rendered against Mexico, the case would have been the same. The obligation which rested upon

Mexico, by its payment, was simply transferred to the officer of the Government who received the money, and that obligation is one, as we have seen, capable of being enforced.

As showing the views of our Government on this subject, as to the rights of the parties, it may be well to state that, as a matter of practice, the money paid by foreign Governments to meet the cases of individual awards, does not generally go into the Treasury, but is held by the Secretary of State and distributed by him in satisfaction of the various awards.

Nevertheless, it is true that the payment is in form a payment to the United States, and the Secretary of State is but the agent of the Government to make distribution. It would be entirely in the power of the Government to designate some other agent. The agent designated in this instance by the act of 1868 was the Secretary of State. The whole control exercised by the Secretary over the money is by virtue of that act, and he can only exercise such authority as is conferred by it.

A very different question arises in regard to the disposition of "peace money," paid by one Government to another. In such a case, although individual claims may form the foundation of the National demand, yet the Government receiving the money assumes none but a moral obligation to indemnify the sufferers. It is not a trustee. It can deal with the distribution of the money according to its own notions of right and justice. Its discretion in this regard cannot be controlled, for what it gives is out of mere bounty.

It is supposed that this Court has announced different conclusions from those which we have advanced, and the decision in the case of *Key* vs. *Frelinghuysen*, Secretary of State, 110 U. S., 63, is referred to But that decision falls far short of lending any support to the views now urged by the respondent. On the contrary, ~~that decision~~ it impliedly rejects the broad claim asserted.

On behalf of the then respondent, the argument was strongly urged that the Executive could not be controlled by the courts as to the payment of the sums awarded by the Commission, and that the petitioner had no title to the money in question that could be recognized by a court ; that if there was any trust on the part of the Government, it was a political trust, not cognizable in a court of justice.

If this argument had been considered by the court a sound one, the decision undoubtedly would have been put upon that ground. It would have been useless to have discussed the particular facts and circumstances attending the case, if the petitioner in no event had a right enforceable in a court of justice.

But the argument evidently failed to impress the court, for they denied the right to a mandamus, on the ground that the facts of the particular case were such as to justify the Secretary in withholding payment.

The single question was, whether it was competent for the Secretary to withhold payment pending the ratification of a convention by the Senate for a re-trial of the case.

This court held, that the United States had the right to treat with Mexico for a re-trial, by the ratification of a new convention. "Under these circum-

stances (say the court), it is, in our opinion, clearly within the discretion of the President to withhold all further payments to the relators, until the diplomatic negotiations between the two governments on the subject are finally concluded. That discretion of the Executive Department of the Government cannot be controlled by the judiciary."

And to make the point of the decision more emphatic, the court repeat:

"All we decide is, that it was within the discretion of the President to negotiate again with Mexico in respect to the claims, and that as long as the two governments are treating on the questions involved, he may properly withhold from the relators their distributive shares of the moneys now in the hands of the Secretary of State."

Certainly there is nothing in this decision to weaken the force of our argument or to strengthen the argument urged by the respondent. The implication is very strong that but for the pendency of the treaty the mandamus would have been sustained.

There is no question in the present case of any new negotiation concerning the validity of the award. The single issue is whether the Secretary can be compelled to pay the award to the party entitled thereto, and we submit that, as regards such payment, the Secretary in no sense exercises political functions, but performs a ministerial duty prescribed and regulated by law.

W. HALLETT PHILLIPS.

for Defendant in Error

27-246

# IN THE SUPREME COURT
## OF THE UNITED STATES.

THOMAS F. BAYARD, SECT'Y OF STATE,
*Plaintiff in Error.*
*vs.*
THE UNITED STATES, UPON RELATION OF
STEPHEN V. WHITE.
} No.———

Now comes the defendant in error by S. V. White, Relator, and moves the court to advance the hearing of this cause to an early day in the October Term, 1887, for that:

1st. The suit is for mandamus against the plaintiff in error, as Sectreary of State, and in case of his death or removal from office, the suit would abate.

2d. The suit is brought to define the duty of plaintiff in error as Secretary of State, under a Special Act of Congress, approved June 18, 1878, directing payment of certain trust funds paid to the Secretary of State by the Republic of Mexico, to claimants and their assignees, under the joint convention of Mexico and the United States, concluded July 4th, 1868, and the contention is as to such official duty as such Secretary.

3. The action is between the United States and an administrative officer, charged with the administration of a public trust, especially imposed by statute.

S. V. WHITE, Relator,
*For Defendant in Error.*

127-231

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1887.**

No. 1241.

THE UNITED STATES EX REL: LUTZARDA ANGARICA DE LA RUA, EXECUTRIX OF JOAQUIN GARCIA DE ANGARICA, DECEASED, PLAINTIFF IN ERROR,

*vs.*

THOMAS F. BAYARD, SECRETARY OF STATE.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

**FILED OCTOBER 17, 1887.**

# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1887.

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## No. 1241.

THE UNITED STATES EX REL: LUTZARDA ANGARICA DE LA RUA, EXECUTRIX OF JOAQUIN GARCIA DE ANGARICA, DECEASED, PLAINTIFF IN ERROR,

*vs.*

THOMAS F. BAYARD, SECRETARY OF STATE.

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IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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INDEX.


| | Original. | Print. |
|---|---|---|
| Caption | *a* | 1 |
| Petition for writ of mandamus | 1 | 1 |
| Relator's Exhibit No. 1—Decision of the Arbitrators, American and Spanish Commission, No. 13. Joaquin Garcia de Angarica *vs.* Spain | 26 | 17 |
| No 2—Pages 497–503 of "Foreign Relations with the United States," 1877, being letter of Mr. Cushing to Mr. Evarts of March 30, 1877, and inclosures | 28 | 18 |
| No. 3—Pages 521–525 of "Foreign Relations of United States," 1877, being letter of Mr. Lowell to Mr. Evarts of October 12, 1877, and inclosures | 37 | 26 |
| No. 4—Message of the President of the United States transmitting in response to Senate resolution of January 19, 1880, a report from the Secretary of State in relation to claims before the American-Spanish Claims Commission and the proceedings of that body | 45 | 31 |


---

JUDD & DETWEILER, PRINTERS, WASHINGTON, DECEMBER 7, 1887.

| | Original. | Print. |
|---|---|---|
| Order for rule to show cause to issue | 55 | 38 |
| Answer of respondent | 56 | 44 |
| Appendix to answer—Agreement between the United States and Spain for the settlement of certain claims of citizens of the United States, concluded February 12, 1871 | 60 | 46 |
| Order certifying case to General Term | 63 | 47 |
| Hearing and submission | 63 | 48 |
| Order dismissing petition | 64 | 48 |
| Opinion | 65 | 48 |
| Bond | 71 | 56 |
| Writ of error | 72 | 57 |
| Citation | 72 | 57 |
| Proof of service of writ of error and citation | 73 | 57 |
| Clerk's certificate | 74 | 58 |

*a* In the Supreme Court of the District of Columbia.

THE UNITED STATES OF AMERICA on the Relation of Lutzarda Angarica de la Rua, as Executor of the Estate of Joaquin Garcia de Angarica (Deceased),
*vs.*
THOMAS F. BAYARD, as Secretary of State of the said United States.
} At Law, No. 26471.

1 *Petition for Writ of Mandamus. Filed Nov.* 24, 1885.

In the Supreme Court of the District of Columbia.

THE UNITED STATES OF AMERICA on the Relation of LUTZARDA Angarica de la Rua, as Executrix of the Estate of Joaquin Garcia de Angarica (Deceased),

*vs.*

THOMAS F. BAYARD, as Secretary of State of the said United States.

To the supreme court of the District of Columbia:

Your petitioner, Lutzarda Angarica de la Rua, executrix of the estate of Joaquin Garcia de Angarica (deceased), respectfully shows to this honorable court as follows:

First. That on the 12th day of February, 1871, there was concluded and duly ratified at Madrid, Spain, between the envoy extraordinary and minister plenipotentiary of the United States, acting for and in behalf of the United States of America, and the minister of state of Spain, acting for and in behalf of the government of Spain, a convention or agreement for the settlement of certain claims of citizens of the United States on account of wrongs and in-
2 juries committed by the authorities of Spain in the Island of Cuba, which said convention or agreement your petitioner begs leave to refer to and make use of in this proceedings as if fully set forth herein.

Second. That by the terms of the said convention or agreement it was provided, among other things, that such claims should be submitted to arbitrators, one to be appointed by the Secretary of State of the United States, another by the envoy extraordinary and minister plenipotentiary of Spain at Washington, and these two to name an umpire to decide all questions upon which the said arbitrators should be unable to agree, and that the awards made by said commission so constituted in the several cases submitted to the said arbitration should be final and conclusive upon the said two governments, which severally promised to and with each other to give the same full effect in good faith as soon as possible.

Third. That pursuant to the said convention or agreement the said arbitrators and umpire were duly appointed, and a commission thus composed, generally known as the "Spanish-American Claims Commission," was duly and accordingly established, and your peti-

tioner's testator, the said Joaquin Garcia de Angarica, thereupon duly filed before said commission a claim against the said government of Spain properly within the description contemplated by said convention or agreement and rightfully within the jurisdiction of said arbitrators or commission, and that, after due proceedings thereupon had, the said commission duly awarded a judgment in favor of said Joaquin Garcia de Angarica and against the said kingdom of Spain for the sum of seven hundred and forty-eight thousand one hundred and eighty dollars ($748,180.00), with interest at the rate of six per centum per annum from the 1st day of November, 1875, until paid.

3 Fourth. That in pursuance of said judgment or award the kingdom of Spain, through its duly appointed ministers and agents, did in fact pay unto the said Secretary of State of the United States, to the use of said Joaquin Garcia de Angarica and to be applied in satisfaction of the judgment or award obtained as aforesaid, the full amount of the said judgment or award, with the interest thereon as above stated, such payment having been made in two instalments, to wit, on March twenty-seventh, 1877, the sum of four hundred and four thousand nine hundred and thirty-nine dollars and sixty-two cents ($404,939.62) and on October eighth, 1877, the further sum of four hundred and eighteen thousand one hundred and ninety-one dollars and sixty-one cents ($418,191.61), making in the aggregate the sum of eight hundred and twenty-three thousand one hundred and thirty-one dollars and twenty-three cents ($823,131.23).

Fifth. That upon the receipt of said sum of eight hundred and twenty-three thousand one hundred and thirty-one dollars and twenty-three cents ($823,131.23) it became the lawful duty of the said Secretary of State to at once pay the whole of the said sum of money in satisfaction of the said judgment or award, and your petitioner alleges and admits that the same was then accordingly so paid, saving and with the exception of the sum of forty-one thousand one hundred and twenty-nine dollars and seventy-four cents ($41,129.74), which your petitioner alleges the said Secretary of State unjustly and without authority of law retained in his possession ostensibly until such time as the government of Spain should make provision for the payment of the expenses of the said arbitrators or commission.

Sixth. And your petitioner further alleges and shows that

4 the said alleged reason and purpose of the said retention and withholding of the said five per centum of the said judgment or award was officially announced and declared in a circular letter addressed by the then Secretary of State to the said Joaquin Garcia de Angarica in the following words, to wit: "Five per centum of the amount due in each case will be reserved for the present to meet the expenses of the commission until a payment to cover such expenses shall have been made by Spain in conformity with the provision in that regard of said agreement of February 12th, 1871, between the United States and Spain;" and that in a report made by the said Secretary of State to the President of the United States, under date of February 16th, 1880, and transmitted by the latter to

the Senate of the United States, in compliance with a resolution thereof of January 19th, 1880 (the same being executive document No. 86, "Senate," 46th Congress, 2d session), the said Secretary of State again stated in reference to the same matter that "this retention of five per centum may be regarded as provisional only, the commission not having yet taken the final step of adding a percentage to the amount of its awards in order to meet the expenses of the commission."

Seventh. And your petitioner further alleges and shows that shortly after the payment of the sum of money last above mentioned the said Joaquin Garcia de Angarica departed this life, leaving a will and testament, which was admitted to probate before the surrogate of the county of New York on or about the second day of April, 1878; whereupon letters testamentary in due form of law were issued to your petitioner as sole executrix of said will and testament, and that your petitioner thereupon became and has ever since remained lawfully entitled to all the rights of the said Joaquin Garcia de Angarica in the premises.

5 Eighth. And your petitioner further alleges and shows that the expenses of the said commission were provided for in the seventh article of the said convention or agreement as follows: "The expenses of the arbitration will be defrayed by a percentage to be added to the amount awarded;" which percentage your petitioner respectfully shows must be properly regarded and treated as an obligation of the government of Spain wholly separate, distinct, and independent of the respective awards in favor of the several claimants before the said commission, including the said award or judgment in favor of the said Joaquin Garcia de Angarica, and your petitioner alleges that the same was so regarded and treated by the said Secretary of State, as herein appears.

Ninth. And your petitioner further alleges and shows that the retention by the said Secretary of State of the sum of money last above stated and as aforesaid was wholly without warrant or authority of law, either by virtue of the said convention or agreement above referred to or of any statute of the United States or otherwise, and accordingly your petitioner, by her attorneys, protested and continued to protest against the same and duly demanded of the said Secretary of State the payment of the said sum of money; but, notwithstanding said protest and the continuance thereof as aforesaid, the said Secretary of State and his successors in office continued to arbitrarily and unlawfully retain and withhold the same until the 12th day of February, 1885.

Tenth. And your petitioner further alleges and shows that the Secretary of State in office at the time the said sum of forty-one thousand one hundred and twenty-nine dollars and seventy-four cents ($41,129.74) was first unlawfully and arbitrarily retained and withheld as aforesaid caused the same to be invested in bonds or securities of the United States of America, with the intent and

6 purpose of paying the interest or income thereof earned during the period of the retention and withholding of the said sum of money as aforesaid, together with the said principal sum, to

the person or persons entitled to receive said main or principal sum, and, accordingly, so notified the said Joaquin Garcia de Angarica in the following terms, to wit: "It is hoped that no great delay will occur in receiving the payment from Spain, which will liberate this reserve for expenses, and the Department will expect to keep this reserve invested in interest-bearing securities of the United States to cover the delay in its distribution to the claimants;" and, furthermore, your petitioner alleges and shows that in a letter to the attorneys of your petitioner, bearing date the 13th day of September, 1880, the said Secretary of State again affirmed and declared such intention, and, agreeably thereto, stipulated and promised your petitioner, through her said attorneys, so to pay the same, which said letter or a duly verified copy thereof your petitioner stands ready to produce before this honorable court if required.

Eleventh. And your petitioner further alleges and shows to this honorable court that shortly previous to the 9th day of February, 1885, the said sum of forty-one thousand one hundred and twenty-nine dollars and seventy-four cents ($41,129.74) was withdrawn from investment as aforesaid by the then successor of the said Secretary of State, and that on the said 9th day of February, 1885, the attorneys of your petitioner received from the Department of State a communication in writing as follows:

DEPARTMENT OF STATE,
WASHINGTON, *February* —, 1885.

Messrs. Coudert Brothers, New York:

The Secretary of State will be prepared to pay the five per centum balance due to the beneficiaries of the awards of the Spanish and American Claims Commission on and after the 11th instant.

F. J. KIECKHOEFER,
*Disbursing Clerk.*

7 Twelfth. And your petitioner further alleges and shows that on the 12th day of February, 1885, the said Secretary of State caused to be paid to your petitioner, through her attorneys, the said main or principal sum, to wit, the said sum of forty-one thousand one hundred and twenty-nine dollars and seventy-four cents ($41,129.74), but the said Secretary of State wholly omitted, neglected, and failed to pay therewith the interest or income thereof earned by and from the said investment.

Thirteenth. And your petitioner further alleges and shows that on the 13th day of February, 1885, the attorneys of your petitioner addressed to the said Secretary of State a communication in writing, of which the following is a copy:

NEW YORK, *February 13th*, 1885.

Hon. Frederick T. Frelinghuysen, Secretary of State, Washington, D. C.

DEAR SIR: Referring you to the case of Joaquin Angarica, No. 13, before the American and Spanish Claims Commission, in which

we yesterday received the sum of $41,129.74, 5 per cent. balance of the principal of the sum paid by Spain in satisfaction of the said claim, we desire to call your attention to the fact that the amount of this award has been withheld by your Department since the year 1877, and that the same, as we have been advised by your Department, has been meantime invested for the benefit of the claimant in that case.

We have always understood that the increase of this fund by the interest on its investment would also be paid with the principal as a matter of course, and on the 13th of September, 1880, your Department, by Mr. Evarts, the Secretary at that time, wrote us in terms plainly indicating that such was the understanding of the State Department also. We enclose a copy of the letter referred to. The executrix of the estate of Mr. Angarcia is desirous of closing
8 her trust as soon as possible and we would be obliged to you for a statement of the interest and for its payment at your early convenience.

We have the honor to be, sir, with very great respect, your obedient servants,

COUDERT BROTHERS.

Fourteenth. And your petitioner further alleges and shows that the said Secretary of State did not in due course answer the said communication of the said attorneys of your petitioner as above set forth, whereupon the said attorneys addressed to the said Secretary of State a further communication in writing as follows:

NEW YORK, *February 24th*, 1885.

Hon. Frederick T. Frelinghuysen, Secretary of State, Washington, D. C.

DEAR SIR: On the 13th inst. we had the honor to write you a letter concerning the accrued and collected interest arising on the investment of 5 p. c. retained for a number of years from Mr. Angarica, the claimant in case No. 13 before the American and Spanish Claims Commission.

Even at the risk of appearing overpressing, the circumstances are such that we must be pardoned if we make one more urgent appeal in behalf of our client. As it is possible that you did not receive our last, we beg to hand you a copy of that communication and of the enclosure which accompanied it.

You will not fail to see that a refusal on the part of your Department to adjust this matter will submit our client to very great delay after the changes incident upon a new administration have been effected. The facts are all within your personal knowledge; your predecessor, Mr. Evarts, has officially promised us the payment of the interest earned on the money; you have yourself ordered the payment of the principal; may we not now hope that as a mere act of justice to our client you will direct that a final settlement be at once effected, so that we may be spared the necessity of going over the whole subject anew with your successor.

Hoping that this the last appeal which it will be in our
9 power to make may be heard, we have the honor to remain, dear sir, with much respect,

Your obedient servants,

COUDERT BROTHERS,

*Att'ys for the Ex'x of the Est. of Joaquin G. de Angarica, Dec'd.*

(2 enclosures.)

Fifteenth. And your petitioner further alleges and shows that the said Secretary of State, under date of the 26th day of February, 1885, answered the said two communications above set forth by a letter, of which the following is a copy:

DEPARTMENT OF STATE,
WASHINGTON, *February* 26, 1885.

Messrs. Coudert Bros., box 2559, New York city.

GENTLEMEN: I have to acknowledge the receipt of your letters of the 13th and 24th instant referring to the case of Joaquin Angarica (No. 13) before the American and Spanish Claims Commission in which you received, on the 12th instant, the 5 per cent. balance of the principal of the sum paid by Spain in satisfaction of the said claim which had been withheld in the absence of a payment of the expenses of the commission by Spain to meet a contingency.

You enclose a copy of a letter of Mr. Evarts, Secretary of State, of 13th September, 1880, in which he observes that any interest accruing on the said withheld 5 per cent. would eventually be paid to them.

Since the date of Mr. Evarts' letter a question of a similar nature has received the action of Congress, and it is proper to say that such action is apparently adverse to the request you make for the payment of interest in this case. I refer to the act of February 22, 1883 (vol. 22, Statutes at Large), entitled "An act in relation to the Japanese indemnity fund." It will be seen by Senate Report No. 120, of 7th February, 1882, that the amount named in the act of February 22, 1883, is the amount originally received from Japan and did not include the interest received by the investment thereof.

10 In view of the above the Department must decline to take the action in this case which you request.

I am, gentlemen, your obedient servant,

FREDK. T. FRELINGHUYSEN.

Encl.: Senate report mentioned.

Sixteenth. And your petitioner further alleges and shows that the said communication was not received by the said attorneys of your petitioner until the 3d day of March, 1885, and that on the following day the term of office of the said Secretary of State expired, and that he was succeeded by the present incumbent of that office, the Honorable Thomas F. Bayard.

Seventeenth. And your petitioner further alleges and shows that

owing to a change of administration and the accession of the present incumbent to the office of Secretary of State the matter of your petitioner's complaint herein was of necessity suffered to remain in abeyance for several months, although your petitioner continued in the meantime to demand the payment of the interest or income earned by the investment aforesaid, and that on the 1st day of October, 1885, the said attorneys for your petitioner addressed a communication, also in writing, to the present Secretary of State, as follows:

NEW YORK, *October 1st*, 1885.

Hon. Thos. F. Bayard, Secretary of State, Washington, D. C.

DEAR SIR: Begging your attention to the letter addressed to us by your predecessor and dated February 26th, 1885, we ask leave to renew our request of February 13th and 24th of this year, that the Department pay to us, as the attorneys for the estate of Joaquin Angarica, the accrued interest earned upon the investment of 5 per cent. of the award to Mr. Angarica by the Spanish-American Claims Commission.

A brief history of the case is as follows: Mr. Angarica was
11 a claimant before the Spanish-American Commission for the adjustment of losses sustained by American citizens by the insurrection in Cuba. The commission awarded him a sum amounting to several hundred thousand dollars. All but five per cent. of this award was paid in 1877, but the Department withheld provisionally the said 5 per cent. until Spain should pay the expenses of the commission. Mr. Angarica, through his attorneys, protested and continued to protest against the injustice of this course, but the Department adhered for a long time to its position, and defended itself in this course, among other things, by investing the money, which it promised to ultimately pay, with the accrued interest. (See letter of Mr. Secretary Evarts, September 13th, 1880.)

Notwithstanding constant demands for this money, it was withheld nearly eight years, until finally, just before the incoming of the present administration, the said 5 per cent., without the accrued interest, was paid on the 12th of February last. We therefore request the payment of the accrued interest on the dates of our letters above mentioned, in answer to which we received the letter of Mr. Frelinghuysen of February 26th, 1885, above alluded to.

Mr. Frelinghuysen's position was that the Department considered itself bound by the precedent set by Congress in not paying the interest earned on the fund in the Japanese indemnity case. Since that time, however, we are informed by the chief clerk of the State Department that Congress has taken an entirely different course with respect to a similar fund in another case, and we therefore assume that the one case so far neutralizes the other that the argument of Mr. Frelinghuysen is now entirely out of the question. But if a different view should be entertained we may be permitted to remark that our case and the Japanese case are wholly dissimilar for the following reasons:

In the Japanese case a gross sum was demanded of and paid by

Japan, irrespective of the several interests of the citizens who suffered individual damage. In other words, the money received was to satisfy a national wrong and indignity. It was, therefore, competent for Congress to pay or not to pay the persons who suffered private damage. Justice, of course, would say that the money should be given to the injured citizens; but in doing so the Government might or might not pay the accrued interest on the investment of the fund, at its pleasure.

12 In our case, on the other hand, a specific sum was paid by Spain for the satisfaction of specific claims, and we have always contended that the money awarded to our client belonged to him the instant it was received by the Department of State. Another distinction between the two cases may be found in the fact that one case required Congressional action and the other not.

Our theory in this respect was practically acceded to by the Department when the balance was paid last February. We now ask that the interest earned on the investment of the money while it was unjustly withheld from us may also be paid, not only because the Department has promised to do so and is, therefore, bound in good faith to keep the promise, but because we are entitled to it upon every principle of fairness and justice. The money is our property. It never could have been lawfully withheld, whether Spain paid the expenses of the commission or not. The legal test of this proposition is found in the inquiry whether, in the event that Spain should never pay such expenses, could the State Department convert our money to the purpose and pay the expenses itself? We do not think any sound lawyer would affirm such a proposition. If not, aside from the promise of the Department, what valid reason can there now be advanced for continuing to withhold the money we claim?

Asking your early attention in the premises, we beg to remain, sir,

Your very obedient servants,

COUDERT BROTHERS,
*Atty's for Estate of Joaquin Angarica.*

Eighteenth. And your petitioner further alleges and shows that, on the 8th day of October, 1885, the said attorneys of your petitioner received from the present Secretary of State an answer to the communication last above set forth as follows:

DEPARTMENT OF STATE,
WASHINGTON, 7 *October*, 1885.

Messrs. Coudert Brothers, New York.

GENTLEMEN: I have to acknowledge the receipt of your
13 letter of the 1st instant, which has received my careful consideration.

You ask that the Department should pay you the accrued interest earned upon the investment of 5 per cent. of the award to Mr. Angarica by the Spanish-American Claims Commission, thus requesting me to overrule the decision of my predecessor communicated to you in his letter of 26 February last.

It is the settled practice of this Department that a decision of the Secretary, given deliberately on an issue specifically presented to him, will be considered as final, unless it is shown to have been produced by fraudulent misrepresentations or made under a palpable mistake of fact or of law. It is not pretended in the present case either that there were fraudulent misrepresentations made to the late Secretary of State, influencing his decision, or that he was acting at the time under a palpable mistake of fact. The only other ground for reversing Mr. Frelinghuysen's decision is that he was acting under a palpable mistake of law; but so far from this being the case, I hold that Mr. Frelinghuysen's decision is in accordance with the almost unbroken rulings of the executive and judicial departments of our Government. (See 7 Opinions of Attorney General, 523, 535; Gordon *v.* United States, 7 Wallace, 188.)

In accordance, therefore, with the decision above referred to I must decline to comply with your request.

I am, gentlemen, your obedient servant,

T. F. BAYARD.

Nineteenth. And your petitioner further alleges and shows that on the eighth day of October, 1885, the attorneys for your petitioner replied to the said communication of the said Secretary of State last above set forth as follows:

NEW YORK, *October 8th*, 1885.

Hon. Thomas F. Bayard, Secretary of State, Washington, D. C.:

We beg to acknowledge the receipt of your favor of yesterday in regard to the claim in behalf of the estate of Mr. Angarica, and we are pleased with the very frank and full expression of your views therein contained.

14 With very great deference to your views, we are still of the opinion that all the grounds stated for the refusal to pay the money we request in behalf of our client are inapplicable to this case, and we enter into a discussion of them with the assured conviction that you will frankly reconsider the matter in connection with the suggestions hereinafter made. Indeed, we do not understand your letter as in any sense a final decision, but take it rather as a memorandum of such difficulties as, upon a first examination of the question, arise in your mind.

In regard to the suggestion that one Secretary of State will not overrule the deliberate decision of a predecessor, although it seems substantially conceded by your letter that this is not such a case, and while that question seems to be practically eliminated from our discussions, still, in finally dismissing that ground, we may yet make the suggestion that Mr. Frelinghuysen's letter, to which you refer, was not in any just sense a decision of the question. He simply referred to the Japanese indemnity case with the remark that the action of Congress in that case was "apparently adverse to our request," and thereupon suggested that his action should be accordingly. This position admitted of further discussion from us which would have followed, as it has since followed, had it not been for the

almost immediate close of Mr. Frelinghuysen's term of office. The practice to which you refer was established, we presume, in analogy to the common-law doctrine of *res adjudicata*; but Mr. Frelinghuysen's position is devoid of the fundamental elements of *res adjudicata*, because it was based upon a matter as to which we had not been heard, and we venture to say that upon reconsidering this matter you will not finally hold that a position assumed by one Secretary, just as he may be leaving office, upon a point never before raised, and as to which the adverse party has had no opportunity to be heard in answer, and when it is apparent that the matter is still open to further argument, is so far an adjudication of the matter as to preclude his successor from continuing the examination of the case, taking into consideration such further light as may be afforded, and finally deciding the case after it has been fully presented.

This, we think, leaves nothing for us to answer, except to call your attention to what we consider the inapplicability of the cases of Gordon *v.* The United States, 7 Wall., 188, and the matter in 7 Op. Att'y Gen., 523, 535. Conceding the full force and efficacy attributed to these rulings, they do not, as we view the case, militate against our position. We were aware before we made this claim that it had been held that the Government did not pay interest on claims; but this rule has reference to claims against the Government in which the Government is obligor. Mr. Angarica's case is not a claim against the Government; it was a claim against Spain, and Spain paid the claim through the medium of the Secretary of State, who, as we contend, was obliged to pay it immediately to the claimant against Spain. Having refused to do this, however, upon a ground since admitted to have been insufficient and invalid, and having meantime invested this money and received interest upon it, we consider and confidently contend that the interest earned upon the fund while withheld should also be paid to us, as well as the principal fund, and as, properly speaking, our own money. Our client had no claim against the Government and does not claim interest from the Government. The case is one where we seek money accrued upon a fund which always belonged to us, and which, so far from being a claim against the United States, never belonged to the Government in any sense, and we respectfully submit that this is, in no just view of the case, a claim for interest. It is a claim for money had and received to our client's use.

You make no mention in your letter of the express promise of Mr. Evarts to pay this money. Aside from our conceived legal right to the fund, we hold that the Department is in good faith bound to redeem this promise. Upon your own suggestion, therefore, of the nature of a prior Secretary's action, we consider the Department should no longer hold this fund. Mr. Evarts decided in September, 1880, that Mr. Angarica was entitled to the increase upon this money while it remained in the hands of the Secretary of State. For another Secretary, in 1885, to hold otherwise is certainly to reverse the the action of a former Secretary.

We have taken your last letter as merely calling for further discussion from us, and we trust that you will carefully consider the

views herein expressed, and at your earliest convenience write
16 us fully of any further considerations which may occur to you in order that we may be fully heard.

We confidently trust that when you have thoroughly considered the matter in all its bearings you will ultimately agree with us that the money asked for should be paid.

We have the honor, sir, to be, with great respect, your obedient servants,

COUDERT BROTHERS.

Twentieth. And your petitioner further alleges and shows that on the succeeding day your petitioner's said attorneys addressed a further communication to the said Secretary of State, of which the following is a copy:

NEW YORK, *October 9th*, 1885.

*In Re* ANGARICA.

Hon. Thomas F. Bayard, Secretary of State, Washington, D. C.

DEAR SIR: Since writing our letter of yesterday we have recurred to the case of the "Alabama claims."

In that case Congress has directed the distribution not only of the principal, but the enormous interest derived from the investment of the principal fund in U. S. securities. (See act June 5, 1882, 22 Stat. L., 98.) We cite that case as a legislative affirmation of the precise point we make in this case, namely, that the increase of the fund by investment follows the fund itself. We are not now in any sense asking the Government to pay us interest as such. We merely ask for the increase of the fund resulting from its investment.

With very great respect, we are, dear sir, your obedient servants,

COUDERT BROTHERS.

Twenty-first. And your petitioner further alleges and shows that on the 16th day of October, 1885, the said Secretary of State answered the two several communications of the said attorneys for the petitioner above set forth as follows:

17 DEPARTMENT OF STATE,
WASHINGTON, *October* 16, 1885.

Messrs. Coudert Brothers, 68 and 70 William street, New York.

GENTLEMEN: Your letters of the 8th and 9th instant, in reply to mine of the 7th, have been received and considered.

I perceive no reason, in view of the arguments you advance, for reversing the decision of the Department under which the retained five per centum of the Cuban indemnity awards has been paid to the claimants without the interest accruing thereon by reason of the investment of the funds while held in trust.

Without entering upon discussion of the points involved, I may observe that the investment of the retained moneys was in pursuance

of the general system founded on section 2 of the act of Congress of 11th September, 1841, now sec. 3659 of the Revised Statutes, by which it is prescribed that "all funds held in trust by the United States, and the annual interest accruing thereon, when not otherwise required by treaty, shall be invested in stocks of the United States, bearing a rate of interest not less than five per centum per annum." This enactment is silent as to the beneficiary by such a transaction, and the sole competence of Congress, which prescribed the mode of investment, to direct the disposition of the proceeds is beyond dispute.

The precedents of the Japanese indemnity fund on the one hand and the Alabama claims fund, to which you refer, on the other, show that Congress has exercised its discretion in the premises in each case. It may be remarked further that, in the case of the returned Chinese indemnity fund, Congress applied a part of the accrued interest to the satisfaction of the claim of an American citizen against China.

It is, I hold, *res adjudicata* that the Secretary of State has not discretionary power to dispose of the accumulations resulting from investments made in pursuance of the act of 11th September, 1841. Holding thus, I cannot be bound by what I must deem to have been the improvident intimation contained in my predecessor's letter of September 13th, 1880. I have no option but to cause the ac-
18 cumulation in the present case to pass into the public Treasury, where it is always at the supreme disposal of Congress.

I am, gentlemen, your obedient servant,

T. F. BAYARD.

Twenty-second. And your petitioner further alleges and shows that upon the receipt of the communication of the said Secretary of State last above set forth, the said attorneys of your petitioner addressed to him the following communication:

NEW YORK, *October 17th*, 1885.

Hon. Thomas F. Bayard, Secretary of State, Washington, D. C.

DEAR SIR: We are in receipt of your favor of yesterday's date in reference to the unpaid interest earned by the investment of part of the award to Joaquin Angarica by the Spanish-American Claims Commission.

Without entering into any discussion of the merits of the matter at this present writing, we beg leave to refer to the last paragraph of your letter, in which you say that you "have no option but to cause the accumulation in the present case to pass into the public Treasury," and to request you as a favor to us and to the rights of our client to not cause the money to be covered into the Treasury until we are permitted to exhaust every means for its recovery without a resort to Congress, lest by such a change of the condition of the fund and the *status quo* of the whole case the rights of our client may be technically prejudiced.

We will communicate with you further on the merits of the question in a day or two. Meanwhile we would be obliged to you for

an assurance that there will be no change in the condition of the fund.

We have the honor to be, sir, with great respect, your obedient servants,

COUDERT BROTHERS.

Twenty-third. And your petitioner further alleges and
19 shows that on the 21st day of October, 1885, the said attorneys for your petitioner addressed a further communication to the said Secretary of State as follows:

NEW YORK, *October 21st*, 1885.

Hon. Thomas F. Bayard, Secretary of State, Washington, D. C.

DEAR SIR: In the case of the estate of Joaquin Angarica, about which we have recently had some correspondence, it appears to us that our respective views are so variant in regard to the rights of our client that possibly you would be willing to refer the whole subject to the Attorney General for his opinion.

This is a matter of importance to our client, and we hope you will not deny us any means of obtaining a full consideration of the case.

We wrote you several days ago requesting you to keep the fund intact, which we trust you have acceded to, although we have no word as yet respecting your action in that regard.

We have the honor to be, sir,

Your very obedient servants,

COUDERT BROTHERS.

Twenty-fourth. And your petitioner further alleges and shows that on the 27th day of October, 1885, the said Secretary of State answered the said two communications of your petitioner's attorneys last above set forth as follows:

DEPARTMENT OF STATE,
WASHINGTON, *October 27th*, 1885.

Messrs. Coudert Brothers, box 2559, New York city.

GENTLEMEN: I have received your letters of the 17th and 21st instants in relation to the "unpaid interest earned by the investment of part of the award to Joaquin Angarica by the American-Spanish Claims Commission," and I have to say in reply that there will be no immediate change in the status of the fund.

I am, sir, your obedient servant,

T. F. BAYARD.

20 Twenty-fifth. And your petitioner further alleges and shows that on the twenty-ninth day of October, 1885, the said attorneys of your petitioner addressed a further communication in writing to the said Secretary of State as follows:

OCTOBER 29, 1885.

Hon. Thomas F. Bayard, Secretary of State, Washington, D. C.

DEAR SIR: Referring to the case of Joaquin Angarica (No. 13, before the late Spanish-American Claims Commission), will you kindly give us exact data in regard to the following particulars:

First. The amount of the original award and the date thereof.

Second. The amount received from Spain and the date of its receipt.

Third. The amount paid to the estate of Mr. Angarica, less the five per centum previously retained, and the date of such payment.

Fourth. The amount of the said five per centum retained and whether the same was invested in Government or other securities; and, if so, the date of said investment and what part of said five per centum was so invested, and from what date it earned interest.

Fifth. Whether any change or changes were made in such investment; and, if so, what they were.

Sixth. When said investment ceased to bear interest.

Seventh. The total amount realized upon such investment.

Eighth. To what account does such interest now stand upon the books of the State Department.

We are, sir, very respectfully, your obedient servants,

COUDERT BROTHERS.

Twenty-sixth. And your petitioner further alleges and shows that on the thirty-first day of October, 1885, the said Secretary of State answered the said communication last above referred to as follows:

21 *Tabulated Statement Referred to in and Appended to the Foregoing Letter of the Secretary of State.*

Case of Joaquin G. de Angarica.

| | | | |
|---|---|---|---|
| 1875. | | | |
| Nov. 2 | Award by the umpire for $748,180, with interest until paid. | | |
| | *First Payment by Spain.* | | |
| 1877. | | | |
| M'ch 27 | One-half of award | $374,090 00 | |
| | Interest on above at 6 per cent. from November 1, 1875, to March 16, 1877 | 30,849 62 | |
| | | $404,939 62 | |
| | Add gain by exchange | 1,955 34 | |
| | Total of first payment | $406,894 96 | |
| June 14 | Five per cent. of above deducted by Department of State | | $20,344 75 |
| June 14 | Paid to Mr. Angarica by Department of State | | 386,550 21 |
| | | $406,894 96 | $406,894 96 |

| | | | |
|---|---|---|---|
| | *Second Payment by Spain.* | | |
| 1877. | | | |
| Oct. 8 | One-half of award | $374,090 00 | |
| | Interest at 6 per cent. from 16th to 28th March, 1877, on first payment | 676 43 | |
| | Interest at 6 per cent. on one-half of award from Nov. 1, 1875, to Oct. 8, 1877 | 43,425 18 | |
| | | $418,191 61 | |
| | Deduct loss by exchange | 2,491 86 | |
| | Total of second payment | $415,699 75 | |
| Nov. 9 | Five per cent. of above deducted by Department of State | | $20,784 99 |
| Nov. 9 | Paid to Mr. Angarica by the Department of State | | 394,914 76 |
| | | $415,699 75 | $415,699 75 |
| 1885. | | | |
| Feb. 12 | Total of 5 per cent. retained by Department of State | $41,129 74 | |
| Feb. 12 | Paid to Messrs. Coudert Brothers, attorneys | | $41,129 74 |
| | | $41,129 74 | $41,129 74 |

22

DEPARTMENT OF STATE,
WASHINGTON, *October* 31, 1885.

Messrs. Coudert Brothers, New York.

GENTLEMEN: I have received your letter of the 29th instant making certain enquiries regarding the award of the late American-Spanish Claims Commission in behalf of Joaquin G. de Angarica.

In the annexed tabulated statement you will find full answers to the first three of your enquiries and a portion of the fourth. In further answer to your fourth enquiry I have to state that of the five per cent. retained by the Department of State so much as could be utilized for the purpose was invested in securities of the United States, and that thereafter the surplus, with the interest which accrued on the first investment, was similarly invested, and so were subsequent accumulations of interest.

As you are the attorneys of Mr. Angarica's executrix I have had no hesitation in thus far answering your enquiries, but to give the further detailed information which you ask for would in effect be conceding to private parties an accountability which I owe to Congress alone.

I am, gentlemen, your obedient servant,

T. F. BAYARD.

(See tabular statement.)

Twenty-seventh. And your petitioner further alleges and shows that the said Secretary of State has declined and refused to refer the question of the right of your petitioner to receive the interest or income of said investment to the Attorney General of the United States, although the latter officer, under the statutes of the United States, is the proper, regular, and lawful adviser of the several heads

of the executive departments in questions of law, and that the said Secretary of State declines to continue and entertain further argument or discussion upon the said question from the said attorneys for your petitioner, thus holding the case finally and irrevocably decided, as far as action on the part of the said Secretary of State may be had.

23

Twenty-eighth. And your petitioner further alleges and shows that independently of and in addition to the intent and purpose of the said investment, and independently and in addition to the affirmation and declaration of the same by the then Secretary of State, and independently of the stipulation and promise of the said Secretary of State to pay the income of the said investment as set forth in the tenth paragraph or division of this petition, your petitioner is advised and believes that, as matter of law only and alone, the said interest or income is a mere incident to the main or principal fund aforesaid and follows the same as attributive and accessory thereto.

Twenty-ninth. And your petitioner further alleges and shows that she is in this behalf without the ordinary remedies afforded and allowed by law and has no means of redress except by the writ of mandamus; that the fund due and payable to your petitioner is an ascertained, liquidated, and fixed sum of money, involving no inquiry or accounting between your petitioner and the said Secretary of State, and which your petitioner alleges it is the plain ministerial duty of the said Secretary of State to pay unto your petitioner, and that such payment does not call for or involve the exercise of any discretion whatsoever, nor does the same concern or involve any international matter or thing connected with the foreign relations of the United States with the kingdom of Spain or any other country or State.

Wherefore your petitioner prays that this honorable court may be pleased to issue the writ of mandamus, commanding the said Thomas F. Bayard, as said Secretary of State, to pay unto your petitioner the full amount of the interest or income derived from the investment aforesaid, as by law he is obliged and bound to do; and your petitioner, as in duty bound, will ever pray, &c.

24

LUTZARDA ANGARICA DE LA RUA,
*Executrix of the Estate of Joaquin Garcia de Angarica,*
By COUDERT BROTHERS, *Her Attorneys.*
EDWARD K. JONES, *For the Relator.*

FREDERIC R. COUDERT, *Counsel.*

DISTRICT OF COLUMBIA, }
*County of Washington,* } *ss:*

Edward K. Jones, being duly sworn, says that he is a member of the bar of this court and attorney for the petitioner in this proceeding; that he is authorized to present the above petition in behalf of the said petitioner and to verify the same; that the reason the same is not verified by the petitioner in person is because the said petitioner is not within the said county of Washington; that the depo-

nent has read the said petition and knows the contents thereof, and that the same is true to the best of deponent's knowledge, information, and belief.

EDWARD K. JONES.

Sworn to and subscribed before me this 14th day of November, 1885.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Clerk*.

25 The relator (before the issue of the rule to show cause and before the return of the respondent) hereby files the within petition by way of substitution for or amendment of the original petition heretofore filed, and respectfully prays the court to accept the same in lieu of said original petition.

Nov. 24, 1885.

EDWARD K. JONES,
*For Relator*.

26 *Mandamus*.

In the Supreme Court of the District of Columbia. General Term.

THE UNITED STATES OF AMERICA on the Relation of LUTZARDA ANGARICA DE LA RUA,

*vs.*

THOMAS F. BAYARD, as Secretary of State.

RELATOR'S EXHIBIT No. 1.

*Decision of the Arbitrators.*

American and Spanish Commission.

JOAQUIN GARCIA DE ANGARICA
*v.*
SPAIN.
} No. 13.

27 The arbitrators being opposed in opinion on the question of the claimant's right to and the amount of indemnity, it is ordered that the case be submitted to the umpire to determine the amount of indemnity due to the claimant from Spain, if any, by reason of the matters set forth in his original and amended petitions and the proofs adduced in support thereof, and the Secretary is directed to furnish the umpire with a certified copy of this order, together with printed copies of the memorial, proofs, the admission of record, and the briefs filed or to be filed by the respective parties.

Washington, July 23, 1875.

American and Spanish Commission.

In the case of Joaquin Garcia de Angarcia *v.* Spain, No. 13, inasmuch as there is no doubt about the claimant's American citizenship and that his new citizenship was notified to the Spanish authorities six months previous to the embargo; that the Spanish Government itself acknowledged that the claimant was innocent of any participation in the insurrection, inasmuch as his property was seized in the month of August, 1869, and was not restored to him before the years 1873 and 1874, and inasmuch as the Spanish government is liable for unjust detention and use of property, as well as for damages which embargoed property always suffers—

It is my opinion that the claimant has a right to recover damages to the amount of $748,180, with interest at 6 per cent. per annum from this day to the day of payment.

Washington, D. C., November 1, 1875.

A. BARTHOLDI.

28 RELATOR'S EXHIBIT No. 2.

American and Spanish Commission.

JOAQUIN G. DE ANGARICA
*v.*
SPAIN. } No. 13.

I have carefully examined the various papers submitted to me on the motion to reconsider my decision in the case of Joaquin G. de Angarica, and I dismiss it.

Washington, July 15, 1876.

A. BARTHOLDI.

RELATOR'S EXHIBIT No. 2.

(Being pp. 497–503 of "Foreign Relations with the U. S.," 1877.)

No. 291.

*Mr. Cushing to Mr. Evarts.*

No. 1211. LEGATION OF THE UNITED STATES,
MADRID, *March* 30, 1877.

(Received April 16.)

SIR: My telegram of the 28th instant will have advised you of the payment to me by the Spanish government of the one-half of the amount of the awards thus far made by the claims commission constituted by the convention of February 12, 1871, between the United States and Spain.

I now proceed to communicate to you a succinct account of this negotiation.

Mr. Fish's instructions to present the awards for payment, dated December 12, 1876, reached me on the 27th of that month; but telegraphic and other instructions had peremptorily presented to me the duty of taking up and disposing of the question of criminal procedure in Cuba immediately after the conclusion of the negotiation for a treaty of extradition, which, of course, was done to the exclusion of any other matter of serious controversy.

29 The treaty of extradition was signed and sent off on the 5th of January. On the next day the consideration of the criminal procedure question was taken up by the then minister of state (Mr. Calderon y Collantes) and myself, and we arrived at a substantial conclusion on the 12th; but the precise form of reduction proposed remained to be considered by the State Department, and the interchange of telegrams on this point between the Department and the legation protracted the negotiation until the 4th of February, when the protocol disposing of the subject was at length concluded, as the Department was advised by my No. 1161 of February 4, 1877.

Thereupon I took up the subject of the awards, and addressed to the minister of state (Mr. Silvela, who had meanwhile taken the place of Mr. Calderon y Collantes) my note of the 6th of February, 1877, transmitted to the Department with my No. 1170 of February 9. I delivered that note in person to Mr. Silvela, and urged him, with pertinent reasons, to give to it early attention.

But meanwhile the preparations for the king's voyage of inspection of the ports of the Mediterranean were going on, and at last he departed from Madrid, with arrangement that one after another of the ministers should accompany and follow him; and on its being announced that the minister of state was to leave Madrid I became uneasy and made such representations to him on the subject that, admitting unreservedly the obligation of Spain in the premises, he referred me to the minister of ultramar as having received authority to act in the premises in his behalf. This was on the 24th of February.

I immediately sought and obtained an interview with the minister of ultramar, Mr. Martin de Herrera, who also informed

30 me that the Spanish government fully admitted the obligation, but desired indulgence as to the time of payment, proposing to give to the United States transferable international engagements, payable in a series of years. I received this proposition, of course, only *ad referendum*, without affording any encouragement that it would be acceptable.

We had now arrived at the 1st of March. On that day I communicated the proposition of Mr. Martin de Herrera to the Department by telegram. Well aware, however, that it could not be accepted by the Department, as it was not, I concluded, in the absence of the minister of state, to confer on the subject with the president of the council, Mr. Cánovas del Castillo, who corresponds in function to the prime minister of Great Britain.

The result of this interview was telegraphed to Secretary Fish on the 2d, and was responded to by him on the 3d, to the conclusion

that half of the amount of the awards should be paid in cash and half in six months.

I communicatad this conclusion orally to Mr. Cánovas del Castillo, with suggestion that it would be creditable to the Spanish government that it should make the proposition rather than to have the arrangement seem to be imposed on that government.

In consequence a note was addressed by me to Mr. Cánovas del Castillo on the evening of the 3d of March, to which he replied on the 5th, receiving my response on the 6th, the three notes together constituting a confidential agreement in accordance with the terms prescribed by Secretary Fish. Translation of each of these notes is affixed.

Some delay in the official consummation of this agreement was produced by the perpetual *va et vient* of the ministers between Madrid and the several seaports at which the king successively
31 touched, and especially the absence of the minister of state, and the necessity of an official note from him in response to mine of February 26 to constitute formal authentication of the provisional agreement made between Mr. Cánovas del Castillo and myself. Copy and translation of that note which came to me on the 10th of March are annexed.

Meanwhile the minister of ultramar, to whom the task of raising the money had been committed, was busy in that matter and in verifying the calculation of the sum due, which had been made in the legation and delivered to him as the basis of payment. At length, on the 27th, Mr. Martin de Herrera notified me that on the next day he would be ready to make payment, as he in fact did, on the 28th. The payment consisted, as my telegram has informed you, in a sterling bill on the London Banking Association, Limited, at fifteen days' sight, drawn by the Bank of Castile.

Translation of the *estado* or statement on which payment was made, copy and translation of the bill and its endorsement, and copy and translation of the receipt given by me are annexed, on all which the following explanatory observations are submitted:

(*a.*) The figures of the *estado* are an exact copy of those of the statement prepared in the legation.

(*b.*) It represents the one-half of the capital of the awards, with the interest on that half, leaving the payment of the other half, with its interest, for September.

(*c.*) I assumed that the awards are made payable in the gold coin of the United States, carried out in sterling pounds at our standard rate of $\$4.86\frac{65}{100}$ per pound, in conformity with the latest instructions of the Department in that respect.

(*d.*) Interest is only calculated where it is designated in the awards.

32 (*e.*) In two cases, Nos. 66 and 108, interest is awarded, but the rate is not mentioned. In these cases six per cent. is assumed, with right of correction, if necessary, reserved in my receipt.

(*f.*) As the statement was drawn up on the 16th and payment was made by a bill of the 27th the accrued interest is to be reckoned in the final payment.

On receiving payment I sent to the minister of state a reply to his note of the 8th, copy of which is annexed.

You will observe in his note reference to unadjusted claims of Spanish subjects against the United States on account of incidents occurring during the war of secession, as to which, knowing nothing myself and having no instructions, it was impossible for me to go further in reply than to assume that when duly presented the subject would have consideration on the part of our Government.

The bill of exchange will be dispatched to London immediately by express messenger, indorsed to Messrs. Morton, Rose & Co., as instructed by your telegram of the 29th.

I felt much apprehension on first calling the attention of the Spanish government to the subject lest it should be objected that the awards are none of them payable until the final winding up of the commission, especially as in some cases a year and in others even two years had elapsed since the awards were made without payment having been demanded, which might have seemed to imply that the United States did not consider it rightful to make such demand. To be sure, I was prepared to argue this point, but the argument, with response and counter-response, might have occupied considerable time and involved delay at least of uncertain duration. However, neither the minister of state nor the
33 minister of ultramar nor the president of the counsel has raised this or any other technical question during the whole course of the negotiation, which seems to me to deserve to be taken into account as cumulative evidence of the honorable spirit and conduct of the Spanish government in the premises.

Nothing further now seems to me as needful to be added by way of explanation of this negotiation, and it only remains for me to say that it has been concluded with promptness even beyond my expectations, and its results will, it is hoped, commend themselves to the approbation of the President.

I have, &c., C. CUSHING.

(Inclosure A in No. 1211. Translation.)

*Mr. Cushing to Mr. Canovas del Castillo.*

His excellency the president of the council of ministers.

DEAR SIR AND OF MY HIGHEST CONSIDERATION: I beg you to permit me to remind you that my note addressed to the minister of state, on the 6th of February last, respecting the awards of the commission established by the convention of the 12th of February, 1871, still remains unanswered, by reason, doubtless, of the absence of Mr. Silvela from Madrid; and I venture to express the hope that, in view of the urgent circumstances whereof you are aware, it may be convenient for you to communicate to me the resolution of the question taken by the government of his majesty.

I remain, &c., C. CUSHING.

Madrid, March 3, 1877.

(Inclosure B in No. 1211. Translation.)

*Mr. Canovas des Castillo to Mr. Cushing.*

MADRID, *March* 5, 1877.

His excellency Mr. Caleb Cushing.

DEAR SIR: I have just received the letter which you have had the goodness to write to me to-day, wherein you remind me
34 of a note which you were pleased to address to the minister of state, under date of the 6th of last month, relative to the payment, on the part of the Spanish government, of the reclamations which, among various others of citizens of the Union, have been declared competent and accepted by the mixed commission established by the convention of the 12th of February, 1871.

Notwithstanding that the minister of state is at present absent, I have occupied myself and the government of his majesty has preferentially occupied itself with so important a matter, and I am enabled to say to you, in anticipation, without prejudice to the communication to be made to you by the minister of state on his return in the ordinary form, that the Spanish government, recognizing the justice of the reclamation to which you refer, would desire, nevertheless, if that of the United States find no inconvenience therein, to satisfy its import in the terms and forms following:

1st. Paying forthwith one-half of the total amount of the reclamations in question and which have been recognized.

2d. Paying the other half in six months from the time of effecting the first payment.

It would give great pleasure to the government of the king were that which you so worthily represent to accept forthwith this proposition which, in the name of the government of Spain, I have the honor to present to you.

And with this motive I repeat myself your most attentive friend and obedient servant,

Q. B. S. M.,

A. CANOVAS DEL CASTILLO.

(Inclosure C in No. 1211. Translation.)

*Mr. Cushing to Mr. Canovas del Castillo.*

His excellency the president of the council of ministers.

DEAR SIR AND OF MY ENTIRE CONSIDERATION: I have just received with pleasure your note dated yesterday. The proposition of payment—one-half at once and the other half in six months—comes within the conditions fixed in the last telegrams from my Government. I therefore have authority to accept it, and I do so, in the name of the United States, as final settlement of the pending question.

Permit me to add, for my part, that nothing could occur which would so serve to elevate the prestige of Spain and of the govern-

ment of his majesty in the United States and throughout America as this incident does. It is of more value than a battle in the field, inasmuch as it is the evident and incontestable proof that, in the midst of many difficulties, Spain resolutely desires and well knows how to guard intact her traditional good faith and to fulfil, without hesitating, her obligations toward other governments.

I remain your obedient, faithful servant and sincere friend,

Q. B. S. M.,

C. CUSHING.

Madrid, March 6, 1877.

35 [Inclosure E[1] in No. 1211. Translation.]

*Mr. Manuel Silvela to Mr. Cushing.*

(Received March 10—3.30 p. m.)

MINISTRY OF STATE, THE PALACE, *March* 8, 1877.

Excellency:

SIR: In due time I received your excellency's note of the 6th of February last past, in reference to the payment, on the part of Spain, of the awards made in favor of citizens of the United States by the mixed commission established in consequence of the convention settled between Spain and the Union on the 12th of February, 1871.

My absence from this court, by reason of having had to accompany his majesty during a part of his voyage, has been the principal cause of my not having sooner answered your excellency's aforesaid note, but I now hasten to do so, ratifying to you officially that which has already, in a confidential manner, been manifested to you by the president of the council of ministers, in accord with your excellency, that the government of his majesty, recognizing the justice of the reclamation presented by your excellency, is ready to satisfy, in two installments, the sum total of the reclamations examined and allowed up to the present time by the mixed commission, paying forthwith the one-half of their import and the other half in six months after having effected the first payment.

This proposition being accepted by the Government of the Union, which has seen, doubtless, that that of his majesty has done all which lay within its grasp under the present circumstances for the speedy and final settlement of the reclamations of American subjects, and this matter satisfactorily terminated, it only remains to me to call your attention to those of the Spanish subjects who suffered prejudices in the United States during the war of secession—reclamations which were certainly not rejected by the Government of Washington, but their settlement merely deferred until the termination of the war. This has fortunately come to pass, and to-day they could be submitted to the mixed commission established in virtue of the convention of 1871 or to another analogous one created for the purpose, as I have had the honor to suggest to your excellency orally before now.

But upon this matter I reserve to myself the addressing to your excellency of a separate note or communicating instructions to the minister of Spain in Washington, in the assurance that those reclamations will be heeded in justice by the Government of the Union in like manner as those of the Americans have been heeded by Spain.

I take this opportunity of reiterating to your excellency the assurances of my most distinguished consideration.

MANUEL SILVELA.

The minister plenipotentiary of the United States.

(1) There does not appear to be an enclosure "D."

(Inclosure F in No. 1211. Translation.)



*Calculated table of capitals and interests awarded as indemnification to North American citizens by the commission of arbitrators in Washington, showing, up to the sixteenth day of March, 1877, the one-half payable in cash in conformity with the resolution of the ministers of the 6th and in fulfillment of the accord of the 22d of the same month.*

| Number of claim. | Name of claimant. | Date of award. | Terms of interest. | Time of interest. | | | Amount awarded. | Half of the amount awarded. | Interest on half of the award. | Total of one half of award with the interest. | Equivalent in sterling at $4.86.65. | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | *Years.* | *Months.* | *Days.* | | | | | £ | *s.* | *d.* |
| 1 | Henry Story | Jan. 4, 1874 | None | | | | $1,200 00 | $600 00 | | $600 00 | 123 | 5 | 10 |
| 4 | Peter Moliere | Nov. 2, 1875 | Six per cent., September 1, 1870, to payment. | 6 | 6 | 15 | 3,000 00 | 1,500 00 | $588 70 | 2,088 70 | 429 | 4 | |
| 5 | James M. Edwards | Dec. 20, 1875 | None | | | | 5,000 00 | 2,500 00 | | 2,500 00 | 513 | 14 | 4 |
| 13 | Joaquin G. de Angarica | Nov. 2, 1875 | Six per cent., November 1, 1875, to payment. | 1 | 4 | 15 | 748,180 00 | 374,090 00 | 30,849 62 | 404,939 62 | 83,209 | 12 | 5 |
| 14 | Gideon Lowe & Co | Dec. 12, 1874 | Six per cent. January 10, 1869, to December 12, 1874. | 5 | 11 | 2 | 175 00 | 87 50 | 31 10 | 118 60 | 24 | 7 | 5 |
| 23 | José Vicente Brito | Nov. 14, 1874 | Six per cent., February 12, 1869, to November 14, 1874. | 5 | 9 | 2 | 600 00 | 300 00 | 103 60 | 403 60 | 82 | 18 | 8 |
| 31 | Joaquin M. Delgado | Feb. 27, 1875 | Eight per cent., May 5, 1869, to February 24, 1875. | 5 | 9 | 19 | 113,360 00 | 56,680 00 | 26,308 84 | 82,988 84 | 17,053 | 1 | 8 |
| 41 | José de Jesus H y Macias | June 26, 1875 | None | | | | 3,000 00 | 1,500 00 | | 1,500 00 | 308 | 4 | 7 |
| 66 | Gonzalo Poey | Apr. 8, 1876 | Six per cent, October 16, 1872, to payment. | 4 | 5 | | 313 75 | 156 87½ | 41 57 | 198 44½ | 40 | 15 | 7 |
| 87 | Joseph Griffen | Apr. 10, 1875 | None | | | | 500 00 | 250 00 | | 250 00 | 51 | 7 | 5 |
| 108 | Charles Jemot | Apr. 8, 1876 | Six per cent., December 4, 1869, to payment. | 7 | 3 | 11 | 5,000 00 | 2,500 00 | 1,092 02 | 3,592 02 | 738 | 2 | 3 |
| | Total | | | | | | $880,328 75 | $440,164 37½ | $59,015 45 | $499,179 82½ | 102,574 | 14 | 2 |

37 As representative of the United States of North America, accredited near the government of his Catholic majesty, I declare that I have this day received the sum of one hundred and two thousand five hundred and seventy-four pounds sterling fourteen shillings and two pence in a bill upon London, at fifteen days' sight, to the charge of the London Banking Association, of date 27th instant, acknowledging myself satisfied in the name of the Government of my nation by the first installment of the indemnification declared up to the present time by the arbitrators, without prejudice to making the correction, or effecting the payment of the second installment, if the interest set down in the foregoing calculation to the credit of Gonzalo Poey, designated by the number 66, and of Charles Jemot, No. 108, be greater or less than the six per cent. calculated therein, as likewise to the inclusion in the payment of the second installment, the interest accrued from the 16th of the current month, referred to in this calculation, made up to the present time.

Madrid, March 28, 1877.

CALEB CUSHING,
*Minister of the United States.*

RELATOR'S EXHIBIT No. 3.

(Being pp. 521–525 of "Foreign Relations of the U. S.," 1877.)

No. 304.

*Mr. Lowell to Mr. Evarts.*

No. 15.) LEGATION OF THE UNITED STATES,
MADRID, *October* 12, 1877.

(Received November 7.)

SIR: I have the honor to report that for several days before the reception of Mr. Seward's telegram of 26th the legation had been preparing its statement of the account of claims and interests payable on the 28th September, being the second and final payment of the awards passed upon by the mixed commission sitting at Washington, up to and including the 24th March last. The telegram reached me at nine o'clock on the evening of the 26th, and the next morning (as I had before intended) I addressed a note, a copy of which is subjoined, to .the minister of state, inclosing our
38 statement and asking for an interview for the 28th. The same day I received an answer from Mr. Silvela, informing me that, owing to the occupation of the ministry with the return of the royal family on the next morning to Madrid, he should be unable to meet me until between two and three o'clock on the afternoon of Saturday, the 29th. I kept the messenger waiting while I wrote an answer accepting the appointment and expressing my satisfaction that his Catholic majesty's government would be ready to conclude the affair on that day.

I accordingly waited on Mr. Silvela at the hour fixed upon, and, as I had already informed him of my object in asking an interview

for the 28th, I preferred, as a matter of politeness, to speak of other topics first, leaving it for him to broach the matter of the idemnity, which he accordingly soon did.

* * * * * * *

He said that, as our statement would need to be verified by their own accountants and the money arranged for, he hoped I should be satisfied if I received the money within a week. As my instructions were to follow the precedent set me by Mr. Cushing (and none could be better), and as that gentleman had waited twelve days, I consented, at the same time saying that, as I was acting on my own responsibility and my Government would naturally expect to hear from me at once, I trusted that I could depend upon being paid within the period for which Mr. Silvela had asked. On Friday evening, 5th October, at eight o'clock, I received a private note from Mr. Silvela asking me to meet him on the next day, at 2 p. m., in order to see the minister of ultramar (to whose department, as relating to Cuba, the matter belonged) and "to arrange the business of the payment," &c. I at once answered by the same mes-
39 senger that I would wait upon him at the ministry at the time appointed, adding that I was very glad of this exactness on their part, because, trusting in the perfect faith of his Catholic majesty's government, I had already telegraphed to Washington that the money would be paid within the week. Next day I met Mr. Silvela at the hour appointed and went with him to the minister of ultramar, who asked to have the final settlement postponed until Monday. He asked this as a favor, on account of unforeseen circumstances, and, as I felt every confidence in their intention to pay, I consented, but took occasion to inform Mr. Silvela that I had received a telegram from my Government on the subject.

On Monday, at three o'clock, by appointment, I went to the ministry of ultramar, when I received payment, as promised, in a draft on London at fifteen days' sight (as in the case of the former half of the indemnity, for the sum of £106,768 5*s.* 1*d.*, which sum included the interest on such of the awards as bore interest up to the date of payment, viz., 8th October, 1877.

I subjoin for your further information a copy of our statement of the amount due on the 28th of September, as also of the one showing the amount of interest from the 28th September to the 7th October, both inclusive.

* * * * * * *

I sent a special messenger to London at four o'clock on Tuesday afternoon, that being the first train leaving after receiving the draft. Last evening I received a telegram from him announcing his safe arrival, and to-day I received one from Messrs. Morton, Rose & Co. acknowledging receipt of draft.

I beg to add (in my interview with Mr. Silvela) he seemed to think that the promptitude with which Spain had paid the awards of the mixed commission entitled her to some consideration
40 from the Government of the United States, and expressed a hope that future claims should be severly scutinized, as he

feared that the ready payment of those already passed upon might encourage claimants with less substantial titles, or even tend to create them. He spoke with much emotion of the difficulties under which his country labored, and of the efforts she was making to extricate herself, hoping that our own Government would be generous under the circumstances, and that the American member of the commission would in all doubtful cases strengthen the hands of his Spanish colleague. He told me that he wished I would communicate to my Government the substance of what he had urged, and I promised to do so. Mr. Cushing, I am sure, will agree with me in believing that Spain is sincerely anxious to maintain her friendly relations with the United States and willing to do all she can to satisfy all our claims against her.

A copy and translation of the receipt which I gave, together with a copy of my note to Mr. Silvela, acknowledging the reception of the draft, are also transmitted herewith. * * *

I trust that my action in the matter may meet with your approval.

I have, &c., J. R. LOWELL.

(Inclosure A in No. 15.)

LEGATION OF THE UNITED STATES,
MADRID, *September* 27, 1877.

EXCELLENCY: In accordance with the precedent of my predecessor, Mr. Cushing, I have the honor to enclose a statement of the second moiety of the sums awarded to citizens of the United States by the mixed commission sitting at Washington, and payable on the 28th of the present month, under the agreement arrived at by our respective governments on the 8th or March last. The award
41 to Theodore Cabias (No. 10) having been made no longer ago than 24th March last, was, of course, not included in the statement of Mr. Cushing, and that of Gonzala Poey (No. 66) was, on further consideration by the commission, increased by the amount of a little more than two thousand dollars. This fact being brought to the attention of your excellency, it was agreed to include the whole amount of the two awards in this payment. The interest, as your excellency will see, is calculated from the 17th of March last, that being the date up to which it was paid on the 28th of the same month.

I should be greatly obliged if your excellency would appoint an hour to-morrow in which I could have the pleasure of a few moments' interview, in order to conclude an affair the prompt settlement of which has been so honorable to his Catholic majesty's government and so acceptable to that of the United States.

I gladly avail myself of this occasion to renew to your excellency the assurance of my most distinguished consideration.

J. R. LOWELL.

(Inclosure B in No. 15.)

*Calculated statement of capitals and interest due on the 28th of September, 1877, from the Government of Spain (in conformity with agreement) on the awards made in favor of citizens of the United States by the mixed commission, sitting in Washington, up to and including the 24th of March, 1877.*

| Number of claim. | Name of claimant. | Date of award. | Amount of award. | Terms of interest. | Time of interest. | | | Unpaid remainder of principal. | Interest on remainder of award. | Interest from March 16 to March 28 (11 days) on first payment. | Total amount due September 28, 1877, with interest included. | Equivalent in pounds sterling at $4.86.65. | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | Years. | Months. | Days. | | | | | | |
| | | | | | | | | | | | | £ | s. d. |
| 1 | Henry Story | Jan. 4, 1874 | $1,200 00 | No interest | | | | $600 00 | | | $600 00 | 123 | 5 10 |
| 4 | Peter Moliere | Nov. 2, 1875 | 3,000 00 | 6 per cent., September 1, 1870, to payment. | 7 | | 27 | 1,500 00 | $636 65 | $2 71 | 2,139 36 | 439 | 12 3 |
| 5 | James M. Edwards | Dec. 20, 1875 | 5,000 00 | No interest | | | | 2,500 00 | | | 2,500 00 | 513 | 14 4 |
| 10 | Theodore Cabias* | Mar. 24, 1871 | 3,000 00 | 6 per cent., January 15, 1869, to payment. | 8 | 8 | 13 | 3,000 00 | 1,566 41 | | 4,566 41 | 938 | 6 10 |
| 13 | Joaquin G. de Angarica | Nov. 2, 1875 | 748,180 00 | 6 per cent., Novembr 1, 1875, to payment. | 1 | 10 | 27 | 374,090 00 | 42,810 24 | 676 43 | 417,576 67 | 85,806 | 7 4 |
| 14 | Gideon Lowe & Co | Dec. 12, 1874 | 175 00 | 6 per cent., January 5, 1869, to December 12, 1874. | 5 | 11 | 2 | 87 50 | 31 10 | | 118 60 | 24 | 7 5 |
| 23 | José Vicente Brito | Nov. 14, 1874 | 600 00 | 6 per cent., February 12, 1869, to November 14, 1874. | 5 | 9 | 2 | 300 00 | 103 60 | | 403 60 | 82 | 18 8 |
| 31 | Joaquin de Delgado | Feb. 27, 1875 | 13,360 00 | 8 per cent., May 5, 1869, to February 24, 1875. | 5 | 9 | 19 | 56,680 00 | 26,308 84 | | 82,988 84 | 17,053 | 1 8 |
| 41 | José de Jesús H. y Macias | June 26, 1875 | 3,000 00 | No interest | | | | 1,500 00 | | | 1,500 00 | 308 | 4 7 |
| 66 | Gonzalo Poey† | Mar. 24, 1877 | 2,585 60 | 6 per cent., March 8, 1876, to payment. | 1 | 6 | 19 | 2,387 15½ | 240 76 | | 2,627 91½ | 540 | 0 0 |
| 87 | Joseph Griffen | Apr. 10, 1875 | 500 00 | No interest | | | | 250 00 | | | 250 00 | 751 | 7 5 |
| 108 | Charles Jemot | Apr. 8, 1876 | 5,000 00 | 6 per cent., December 4, 1869, to payment. | 7 | 9 | 24 | 2,500 00 | 1,172 36 | 4 51 | 3,676 87 | 55 | 11 0 |
| | | | 885,600 60 | | | | | 445,394 65½ | 72,869 96 | 683 65 | 518,948 26½ | 106,636 | 17 4 |

* No. 10.—New award, and not included in first payment; consequently interest is calculated on whole amount up to and including 27th September, 1877.

† No. 66.—New award; interest has been calculated on whole amount up to and including 27th September, 1877, but amount paid (198.44½) 28th March, 1877, on old award has been deducted.

(Inclosure C in No. 15.)

*Calculated statement of interests due from the Government of Spain (from the 28th day of September to the 7th day of October, 1877, both inclusive) on such of the awards made in favor of citizens of the United States by the mixed commission, sitting in Washington, as bear interest up to the date of payment.*

| Number of claim. | Name of claimant. | Date of award. | Amount on which interest is calculated. | Terms of interest. | Time of interest. | Amount of interest. | Equivalent in pounds sterling at $4.86.65. | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | *Days.* | | £ | *s.* | *d.* |
| 4 | Peter Moliere | Nov. 2, 1875 | $1,500 00 | 6 per cent., September 1, 1870, to payment | 10 | $2 46 | 0 | 10 | 1½ |
| 10 | Theodore Cabiaes* | Mar. 24, 1877 | 3,000 00 | 6 per cent., January 15, 1869, to payment | 10 | 4 93 | 1 | 0 | 3½ |
| 13 | Joaquin G. de Angarica | Nov. 2, 1875 | 374,090 00 | 6 per cent., November 1, 1875, to payment | 10 | 614 94 | 126 | 7 | 3½ |
| 66 | Gonzalo Poey† | Mar. 24, 1877 | 2,387 16 | 6 per cent., March 8, 1876, to payment | 10 | 3 92 | 0 | 16 | 1½ |
| 108 | Charles Jemot | Apr. 8, 1876 | 2,500 00 | 6 per cent., December 4, 1869, to payment | 10 | 4 10 | 0 | 16 | 10½ |
| | | | 383,477 16 | | | 630 35 | 129 | 10 | 8½ |

*No. 10.—New award; interest calculated on whole amount.
†No. 66.—New award; interest calculated on $2,387.16, the sum of $198.44½, paid on old award, having been deducted from amount ($2,585.60) of new award.

44 (Inclosure E[1] in No. 15. Translation.)

As the representative of the United States near the government of his Catholic majesty, I declare that I have received on this date the sum of one hundred and six thousand seven hundred and sixty-eight pounds sterling five shillings one penny in a draft on London at fifteen days' sight, to the charge of the London Banking Association, of this date, acknowledging myself satisfied, in the name of my nation, by the second installment of the indemnification declared up to the present day by the arbiters, including the interests of all the credit included in the foregoing balance due, as therein expressed, up to this day.

Madrid, 8th October, one thousand eight hundred and seventy-seven.

J. R. LOWELL.

45 RELATOR'S EXHIBIT No. 4.

46TH CONGRESS, 2d *Session.* SENATE. Ex. Doc. No. 86.

Sup. C't D. C. General Term.

U. S. *ex rel.* ANGARICA *vs.* BAYARD, Sec'y of State.

Message from the President of the United States, transmitting, in response to Senate resolution of January 19, 1880, a report from the Secretary of State in relation to claims before the American-Spanish Claims Commission and the proceedings of that body.

February 18, 1880.—Ordered to lie on the table and be printed.

To the Senate of the United States:

In compliance with the resolution of the Senate of the 19th of January, 1880, calling for information in relation to claims before the American-Spanish Claims Commission and the proceedings of the commission, I transmit herewith a report from the Secretary of State upon the subject.

Washington, February 16, 1880.

R. B. HAYES.

DEPARTMENT OF STATE,
WASHINGTON, *February* 16, 1880.

The Secretary of State, to whom was referred a resolution of the Senate, dated the 19th of January last, calling for a comprehensive statement of the claims before the United States and Spanish Commission and other particulars, has the honor to lay before the President the papers named in the annexed list and to subjoin the following statement regarding the expenditures of the United States for salaries and "contingent expenses" of the said commission from its commencement to June 30, 1879.

[1] There does not appear to be an enclosure "D."

*Statement.*

| | |
|---|---|
| Amount paid arbitrators | $32,940 45 |
| Amount paid counsel | 36,807 68 |
| Amount paid secretaries | 7,282 50 |
| Rent and other contingent expenses | 12,717 93 |
| Paid subcommission at Havana | 23,210 00 |
| Total | 112,958 56 |

46 Present condition of the amount retained (5 per cent.) from the awards made by the commission, in view of the agreement of February 12, 1871 (paragraph VI), relative to the defrayment of the expenses of arbitration.

| | |
|---|---|
| Amount retained June 11, 1877, from the first installment | $25,079 51 |
| Amount retained November 8, 1877, from the second installment | 25,824 12 |
| Total | 50,903 63 |

(NOTE.—It is proper to state in this relation that this retention of 5 per centum may be regarded as provisional only, the commission not having as yet taken the final step of adding a percentage to the amount of its awards in order to meet the expenses of the commission.)

The above amount and accruing interest have been invested in United States registered bonds, and the total amount was represented January 31, 1880, as follows:

| | |
|---|---|
| Loan of 1881 (5 per cent.) | $52,000 00 |
| Consols (4 per cent.) | 2,250 00 |
| Coin uninvested | 11 94 |
| Total | 54,261 94 |

The only reason of which the Secretary of State is advised why any disagreements which have arisen between the arbitrators in cases submitted to them under the convention have not been submitted to the umpire is stated in the letter to the Secretary of State from the Hon. Thomas J. Durant, the advocate of the United States, which appears among the accompanying papers, and is also set forth in the language of the Marquis de Potestad Fornari, the Spanish arbitrator, in an announcement made by him to the commission in the case of Fernando Dominguez, also to be found among the annexed papers.

WM. M. EVARTS.

The President.

*List of Papers.*

1. Mr. Durant to Mr. Evarts, January 27, 1880, and inclosures.
2. The paper alluded to in the above, signed May 3, 1879, by the arbitrator for Spain.
3. Statement showing the amount received from the Spanish government on account of awards by the commission and the payments made to the claimants on said account.

*Mr. Durant to Mr. Evarts.*

WASHINGTON, D. C., *January* 27, 1880.

SIR: I received, on the 24th of this month, your letter of the 23d, transmitting a copy of a resolution of the Senate, calling for a comprehensive statement of the claims before the American-Spanish Commission and other particulars, and you requested me to communicate to the Department the information required, so far as in my power.

I have now the honor to send you a tabular statement displaying the name of each claimant, the date at which each claim was filed, the amount of each claim, the date of award in each claim, the amount of each award, and a designation of those cases in which there has been a disagreement between the arbitrators and which have not been submitted to the umpire, as provided by the convention establishing the commission.

In those cases in the tabular statement where, under the head of "nature of award," there is a blank nothing has yet been decided, and the cases are still pending.

47 The cases in which there has been a disagreement between the arbitrators but no reference to the umpire are the following:

No. 9. Felix Govin y Pinto.
No. 17. José Garcia Angarica.
No. 22. Pedro David Buzzi.
No. 48. Antonio Maximo Mora.
No. 49. Magdalena Farres de Mora.
No. 50. Fausto Mora.
No. 52. José M. Macias.

The reason why the disagreements have not been referred to the umpire is because the arbitrator on behalf of Spain, on the 3d May, 1879, entered a refusal to concur in such reference in all cases "where a question of citizenship may be involved until he shall have referred the matter to the government of Spain, who shall determine, together with the other high contracting party—the Government of the United States—the exact reach and scope of the right conceded to Spain to traverse an allegation of American citizenship." Such was the language of the Spanish arbitrator.

I inclose herewith a statement, prepared by the secretary of the commission, showing the number of days the commission has been in session each year from the day on which its sessions commenced, May 31, 1871.

The total amount of claims entered is, by my computation $26,702,810.28.

The amount of awards is, exclusive of interest, $958,928.75.

The foregoing embraces all the information called for by your letter.

I have the honor to remain, your obedient servant,

THOMAS J. DURANT,
*Advocate United States.*

Hon. Wm. M. Evarts, Secretary of State.

*Number of Sessions of the Commission in Each Year from its Beginning up to the Present Date, January 26, 1880.*

UNITED STATES AND SPANISH COMMISSION.

1871.

| | No. of sessions. | | No. of sessions. |
|---|---|---|---|
| May 31 | 1 | December 16 | 1 |
| June 5 | 1 | | |
| June 10 | 1 | Number of sessions in 1871 | 5 |
| December 7 | 1 | | |

1872.

| | | | |
|---|---|---|---|
| January 10 | 1 | June 22 | 1 |
| January 22 | 1 | July 6 | 1 |
| January 27 | 1 | September 28 | 1 |
| February 24 | 1 | November 11 | 1 |
| March 9 | 1 | November 16 | 1 |
| March 23 | 1 | December 7 | 1 |
| June 1 | 1 | | |
| June 3 | 1 | Number of sessions in 1872 | 15 |
| June 8 | 1 | | |

1873.

| | | | |
|---|---|---|---|
| January 11 | 1 | July 12 | 1 |
| January 30 | 1 | July 15 | 1 |
| February 15 | 1 | August 30 | 1 |
| March 8 | 1 | September 6 | 1 |
| April 5 | 1 | October 4 | 1 |
| April 12 | 1 | October 11 | 1 |
| April 19 | 1 | October 25 | 1 |
| May 3 | 1 | November 15 | 1 |
| May 17 | 1 | November 29 | 1 |
| May 24 | 1 | December 20 | 1 |
| May 31 | 1 | | |
| June 7 | 1 | Number of sessions in 1873 | 23 |
| June 14 | 1 | | |

48 1874.

| | No. of sessions. | | No. of sessions. |
|---|---|---|---|
| January 10 | 1 | June 6 | 1 |
| January 17 | 1 | July 11 | 1 |
| January 31 | 1 | October 10 | 1 |
| February 14 | 1 | October 31 | 1 |
| February 28 | 1 | November 7 | 1 |
| March 7 | 1 | November 14 | 1 |
| March 21 | 1 | November 21 | 1 |
| April 11 | 1 | December 5 | 1 |
| April 25 | 1 | December 12 | 1 |
| May 2 | 1 | December 19 | 1 |
| May 9 | 1 | | |
| May 16 | 1 | Number of sessions in 1874 | 23 |
| May 23 | 1 | | |

1875.

| | | | |
|---|---|---|---|
| January 9 | 1 | May 15 | 1 |
| January 16 | 1 | May 22 | 1 |
| January 23 | 1 | May 29 | 1 |
| January 30 | 1 | June 5 | 1 |
| February 6 | 1 | June 12 | 1 |
| February 13 | 1 | June 19 | 1 |
| February 20 | 1 | June 26 | 1 |
| February 27 | 1 | July 3 | 1 |
| March 6 | 1 | July 10 | 1 |
| March 13 | 1 | July 17 | 1 |
| March 20 | 1 | July 23 | 1 |
| March 30 | 1 | November 20 | 1 |
| April 3 | 1 | November 27 | 1 |
| April 10 | 1 | December 4 | 1 |
| April 16 | 1 | December 11 | 1 |
| April 24 | 1 | December 18 | 1 |
| May 1 | 1 | | |
| May 7 | 1 | Number of sessions in 1875 | 34 |

1876.

| | | | |
|---|---|---|---|
| January 8 | 1 | March 25 | 1 |
| January 15 | 1 | April 8 | 1 |
| January 29 | 1 | April 22 | 1 |
| February 5 | 1 | May 1 | 1 |
| February 12 | 1 | | |
| February 26 | 1 | Number of sessions in 1876 | 10 |

1877.

| | |
|---|---|
| February 3 | 1 |
| March 17 | 1 |
| May 12 | 1 |
| Number of sessions in 1877 | 3 |

1878.

| | No. of sessions. | | No. of sessions. |
|---|---|---|---|
| February 16 | 1 | April 13 | 1 |
| March 2 | 1 | April 27 | 1 |
| March 16 | 1 | | |
| March 30 | 1 | Number of sessions in 1878 | 6 |

1879.

| | | | |
|---|---|---|---|
| March 8 | 1 | July 12 | 1 |
| March 15 | 1 | July 19 | 1 |
| March 22 | 1 | August 19 | 1 |
| April 5 | 1 | September 11 | 1 |
| April 19 | 1 | October 4 | 1 |
| May 3 | 1 | October 24 | 1 |
| May 17 | 1 | November 8 | 1 |
| May 24 | 1 | November 22 | 1 |
| May 31 | 1 | December 20 | 1 |
| June 7 | 1 | | |
| June 21 | 1 | Number of sessions in 1879 | 21 |
| June 28 | 1 | | |

49

1880.

| | |
|---|---|
| January 10 | 1 |
| January 19 | 1 |
| January 24 | 1 |
| Number of sessions in 1880 (to date) | 3 |

WASHINGTON, *January* 26, 1880.

The foregoing is a correct statement of the number of sessions from the beginning of the commission to date.

EUSTACE COLLETT, *Secretary.*

Spanish and American Commission.

FERNANDO DOMINGUEZ *vs.* SPAIN. } No. 32.

At the meeting of the commission held on the 19th ultimo the decision of the umpire was announced in the case of Fernando Dominguez, whose claim against Spain is inscribed under the No. 32.

Whilst not intending to criticise that decision, in so far as it rests on the merits of the case, there are, nevertheless, two propositions laid down in said decision, which, if they were to be established as precedents, would, in the opinion of the undersigned, deprive Spain of one of the principal reservations made in her behalf by the convention of February, 1871.

The propositions alluded to are—

* * * * * * *

"Therefore, the construction thus given, however broad it may be deemed, must be followed so long as it is unimpeached and unreversed by an American tribunal of superior jurisdiction. The tribunals of the United States are the sole interpreters of the laws of the country, and it is not the privilege of the umpire to review their adjudications as to the requirements of these laws.

"The umpire cannot, in my opinion, entertain the claim that a certificate of naturalization may be sufficient to invest the individual with rights of citizenship as regards the country of adoption, and yet not be effectual as to the country of origin. In the absence of any restrictive treaty enforcing resolutions of such undesirable conflict about private international law, the full effect intended by the Government granting the certificate of naturalization must be given to it by the umpire, inasmuch as such naturalization is not impeachable for fraud or for violation of public international law."

It would be a breach of the proprieties that govern the relations between the arbitrators in a commission like this one and the umpire for the undersigned to attempt an argument on any one point that may be embraced or conveyed in a judgment of the latter; he will, therefore, confine himself to making the following statements:

It is the belief of the undersigned that the convention in virtue whereof this tribunal deliberates grants to Spain, with all its logical and necessary consequences, the right to review the adjudications of courts of the United States in the matter of granting certificates of naturalization, and that such certificates, whilst they may be held as valid for every purpose in the United States, are not, from the mere fact of their existence, conclusive upon Spain.

It is the belief of the undersigned that the above-mentioned right and privilege constitutes one of the bases of the convention of February, 1871, in accordance with which all claims are to be considered.

Every judgment given within the bases established by the convention must be beyond question or criticism.

But none of the bases themselves can be set aside by the members of this commission.

Now, therefore, inasmuch as it is the firm conviction of the undersigned that in the following out practically of either of the two propositions that have been recited serious damage would be done to Spain by setting aside one of the most important safeguards established in her behalf by the convention of February, 1871, the undersigned deems it his duty to declare that he cannot agree to have any case referred to the umpire wherein a question of citizenship may be involved until he shall have referred the matter to the Government of Spain, who shall determine, together with the other high contracting party—the Government of the United States—the exact reach and scope of the right conceded to Spain to traverse an allegation of American citizenship.

POTESTAD FORNARI,
*Arbitrator on the Part of Spain.*

Washington, May 3, 1879.

50 *Statement of Account of Awards by the United States and Spanish Claims Commission, February* 12, 1880.

Amount received from Spanish Government on account of awards by commission:

| | | | |
|---|---|---|---|
| 1877. | | | |
| June 9. | Amount received from Hon. Caleb Cushing (coin) | | $501,590 30 |
| Dec. 12. | Amount received from Hon. J. R. Lowell (coin) | | 516,482 48 |
| | | | 1,018,072 78 |

Payments made to claimants on account of awards:

| | | | |
|---|---|---|---|
| 1877. | | | |
| June 14. | To Joaquin G. D. Angarica | $386,550 21 | |
| June 15. | To Joaquin M. Delgado | 79,220 07 | |
| June 18. | To Gonzalo Pocy | 189 43 | |
| June 21. | To Peter Moliere | 1,993 85 | |
| June 23. | To José de Jesus H. y Macias | 1,431 90 | |
| June 25. | To Vincent Breto | 385 28 | |
| June 25. | To Charles Jemot | 3,428 91 | |
| July 10. | To Gideon Lowe & Co | 113 21 | |
| Oct. 10. | To J. M. Edwards | 2,386 50 | |
| Dec. 12. | To Joaquin de Angarica | 394,914 76 | |
| Dec. 12. | To Joaquin M. Delgado | 78,369 52 | |
| Dec. 12. | To Peter Moliere | 2,022 61 | |
| Dec. 12. | To Theodore Cabias | 4,316 88 | |
| Dec. 12. | To Gonzalo Poey | 2,485 00 | |
| Dec. 12. | To Gideon Lowe & Co | 112 01 | |
| Dec. 12. | To José Vincente Breto | 381 13 | |
| Dec. 12. | To Jos. M. Edwards | 2,360 85 | |
| Dec. 12. | To Charles Jemot | 3,476 07 | |
| 1878. | | | |
| June 17. | To José de Jesus y Macias | 1,416 51 | |
| Feb. 19. | To Cath. Story, administratrix of Hy. Story | 1,139 38 | |
| 1880. | | | |
| Jan. 24. | To Abbie S. Griffin, administratrix of Jos. Griffin | 236 09 | |
| Jan. 24. | To Abbie S. Griffin, administratrix of Jos. Griffin | 238 66 | |
| | | | 967,166 83 |
| | Balance | | 50,905 95 |

*Statement of the Condition of the Cases Before the United States and Spanish Commission, Prepared by Order of the Secretary of State, Received 24th of January, 1880.*

| No. | Name of claimant. | Date of filing claim. | Amount of claim. | Date of award. | Nature of award. | Amount of award. |
|---|---|---|---|---|---|---|
| | | 1871. | | | | |
| 1 | Henry Story | July 13 | $25,000 00 | Jan. 4, 1874 | In money | $1,200 00 |
| 2 | Gregario Gonzales | July 21 | 10,000 00 | Dec. 20, 1873 | Claim dismissed by commission | |
| 3 | Juan F. Machado | Aug. 30 | 35,085 63 | Dec. 20, 1873 | do. | |
| 4 | Peter Moliere | Sept. 21 | 100,000 00 | Nov. 2, 1875 | In money | 3,000 00 |
| 5 | James M. Edwards | Sept. 23 | 25,907 00 | Dec. 20, 1873 | do. | 5,000 00 |
| 6 | Leopold A. Price | Oct. 9 | 150,000 00 | July 19, 1876 | Claim dismissed by umpire | |
| 7 | Francisco C. Yzquierdo | Oct. 20 | 67,310 00 | Nov. 2, 1875 | do. | |
| 8 | William Montgomery | Nov. 1 | 22,090 00 | | Opinion filed by arbitrator of United States only. | |
| 9 | Felix Govin y Pinto | Nov. 8 | 150,000 00 | | Arbitrators disagree; arbitrator of Spain refuses to refer to umpire. | |
| 10 | Theodore Cabias | Nov. 9 | 187,363 25 | Apr. 8, 1876 | In money | 3,000 00 |
| 11 | Lucien Lavigne | Nov. 9 | 65,416 00 | | Claim dismissed by commission | |
| 12 | José G. Delgado | Nov. 23 | 247,398 00 | | Claim dismissed by umpire | |
| | | 1872. | | | | |
| 13 | Joaquin G. de Angarica | Jan. 21 | 2,068,400 00 | Nov. 2, 1875 | In money; award by umpire | 748,180 00 |
| 14 | Gideon Lowe and others | Feb. 3 | 3,000 00 | Dec. 12, 1874 | In money | 175 00 |
| 15 | George Aab | Feb. 3 | 100,000 00 | Dec. 20, 1873 | Dismissed by commission | |
| 16 | Manuel G. Angarica | Feb. 3 | | Dec. 20, 1873 | Dismissed by commission; no memorial filed. | |
| 17 | José Garcia Angarica | Feb. 3 | 781,292 00 | | Arbitrators disagree; arbitrator of Spain refuses to refer to umpire. | |
| 18 | Antonio Bachiller | Feb. 3 | 317,794 93 | Dec. 20, 1873 | Dismissed by commission | |
| 19 | Santiago C. Bello | Feb. 3 | | Dec. 20, 1873 | do. | |
| 20 | Felix Bister | Feb. 3 | 55,381 00 | Apr. 8, 1876 | do. | |
| 21 | Thomas Bister | Feb. 3 | 13,206 00 | | do. | |
| 22 | Pedro David Buzzi | Feb. 3 | 500,000 00 | | Arbitrators disagree; arbitrator of Spain refuses to refer to umpire. | |

*Statement of the Condition of the Cases Before the United States and Spanish Commission, &c.*—Continued.

| No. | Name of claimant. | Date of filing claim. | Amount of claim. | Date of award. | Nature of award. | Amount of award. |
|---|---|---|---|---|---|---|
| | | 1872. | | | | |
| 23 | José Vincente Brito | Feb. 3 | $25,000 00 | Nov. 14, 1874 | In money | $600 00 |
| 24 | George Bode | Feb. 3 | | Dec. 20, 1873 | Dismissed by commission | |
| 25 | Invencio Casanova | Feb. 3 | 3,402,300 00 | | | |
| 26 | Hewlett C. Codwise | Feb. 3 | | Dec. 20, 1873 | Dismissed by commission | |
| 27 | Emilio F. Cabada | Feb. 3 | 150,000 00 | Dec. 20, 1873 | do. | |
| 28 | Casanova Brothers | Feb. 3 | 600,000 00 | | | |
| 29 | Criado y Gomez | Feb. 3 | 1,330,502 77 | | | |
| 30 | Daniel Deshon | Feb. 3 | 3,995 00 | Jan. 31, 1874 | Dismissed by commission | |
| 31 | Joaquin M. Delgado | Feb. 3 | 461,104 50 | Feb. 27, 1875 | In money; award by umpire | 113,360 00 |
| 32 | Fernando Dominguez | Feb. 3 | 28,992 74 | | In money | 1,500 00 |
| 33 | Danford Knowlton & Co. | Feb. 3 | 136,000 00 | | Dismissed by umpire | |
| 34 | Ralph Estrado | Feb. 3 | | Dec. 20, 1873 | Dismissed by commission | |
| 35 | Henry Fritot | Feb. 3 | 250,000 00 | | In money | 500 00 |
| 36 | Thomas K. Foster | Feb. 3 | 25,000 00 | May 9, 1874 | Dismissed by commission | |
| 37 | Eusebio Guiterez | Feb. 3 | | Dec. 25, 1873 | do. | |
| 38 | José Govin y Pinto | Feb. 3 | | Dec. 25, 1873 | | |
| 39 | Duggan, Compton, ex. | Feb. 15 | 144,595 00 | | | |
| 40 | R. M. Hernandez | Feb. 3 | | Dec. 25, 1873 | Dismissed by commission | |
| 41 | José de Jesus Hernandez y Macias | Feb. 3 | 20,000 00 | June 26, 1875 | In money | 3,000 00 |
| 52 | | | | | | |
| 42 | Juan B. de Luna | Feb. 3 | | Dec. 20, 1873 | Dismissed by commission | |
| 43 | Manuel Lanza | Feb. 3 | | Dec. 20, 1873 | do. | |
| 44 | José Manuel Ponce de Leon | Feb. 3 | | Dec. 20, 1873 | do. | |
| 45 | Cristobal Madan | Feb. 3 | 1,116,000 00 | | Arbitrator of Spain refuses to proceed with the case on the ground of the refusal of the State Department to furnish a copy of certain papers asked for by the commission. | |

| | | | | | | |
|---|---|---|---|---|---|---|
| 46 | Martin Mueses | Feb. 3 | | Dec. 20, 1873 | Dismissed by commission | |
| 47 | Thomas J. Mora | Feb. 3 | | Dec. 20, 1873 | do. | |
| 48 | Antonio M. Mora | Feb. 3 | 1,200,000 00 | | Arbitrators disagree; arbitrator of Spain refuses to refer to umpire. | |
| 49 | Magdalena Farres de Mora | Feb. 3 | 15,000 00 | | do. | |
| 50 | Fausto Mora y Arango | Feb. 3 | 100,000 00 | | do. | |
| 51 | Luis C. Madeira | Feb. 3 | 100,000 00 | May 16, 1874 | Claim withdrawn | |
| 52 | José M. Macias | Feb. 3 | 650,000 00 | | Arbitrators disagree; arbitrator of Spain refuses to refer to umpire. | |
| 53 | Manuel Antonio Montijo | Feb. 3 | | Dec. 20, 1873 | Dismissed by commission | |
| 54 | Manuel Prieto | Feb. 3 | 128,828 00 | Jan. 15, 1875 | do. | |
| 55 | Paulina A. Mestre | Feb. 3 | | May 24, 1873 | do. | |
| 56 | John Mathews | Feb. 3 | | Dec. 20, 1873 | do. | |
| 57 | John Wyeth | Feb. 3 | 20,000 00 | July 19, 1876 | Dismissed by umpire | |
| 58 | George W. Wingate | Feb. 3 | 27,280 00 | Dec. 20, 1873 | Dismissed by commission | |
| 59 | Augustus Wilson | Feb. 3 | 400,000 00 | Apr. 25, 1874 | do. | |
| 60 | James H. West | Feb. 3 | | Aug. 22, 1873 | Withdrawn by Department of State | |
| 61 | Andrew D. White | Feb. 3 | | Dec. 20, 1873 | Dismissed by commission | |
| 62 | Harry Norris | Feb. 3 | | Dec. 20, 1873 | do. | |
| 63 | John Nenninger | Feb. 3 | | Jan. 15, 1876 | do. | |
| 64 | Charles Polhamus | Feb. 3 | 100,000 00 | Jan. 29, 1876 | do. | |
| 65 | Juan F. Portuando | Feb. 3 | 100,000 00 | | In money; award by umpire | 60,000 00 |
| 66 | Gonzalo Poey | Feb. 3 | 3,136 64 | Apr. 8, 1876 | In money | 313 75 |
| 67 | Augustus E. Phillips | Feb. 3 | 188,460 89 | | | |
| 68 | Pedro Patchot | Feb. 3 | | Dec. 20, 1873 | Dismissed by commission | |
| 69 | John C. Rozas | Feb. 3 | 220,200 00 | | | |
| 70 | Manuel J. de Rojas | Feb. 3 | 2,447,416 00 | Dec. 20, 1873 | Dismissed by commission | |
| 71 | Perfecto de Rojas | Feb. 3 | 125,000 00 | May 14, 1873 | do. | |
| 72 | M. C. Rodriguez & Co. | Feb. 3 | 397,039 72 | | | |
| 73 | Roman Rivas y Lamar | Feb. 3 | 243,114 60 | | | |
| 74 | Margaret C. Speakman | Feb. 3 | 30,000 00 | July 19, 1876 | Dismissed by umpire | |
| 75 | Silas M. Stillwell | Feb. 3 | | Dec. 20, 1773 | Dismissed by commission | |
| 76 | Emilio de Silva | Feb. 3 | | Dec. 20, 1873 | do. | |
| 77 | John Shannon | Feb. 3 | | Dec. 20, 1873 | do. | |
| 78 | Henry J. Smith | Feb. 3 | 25,000 00 | Dec. 20, 1873 | do. | |
| 79 | Dr. A. T. Simmons | Feb. 3 | 200,000 00 | Dec. 18, 1875 | do. | |
| 80 | Augustin Santa Rosa | Feb. 3 | | Dec. 20, 1873 | do. | |
| 81 | E. G. Shmidt | Feb. 3 | 167,810 00 | May 23, 1874 | do. | |

*Statement of the Condition of the Cases before the United States and Spanish Commission, &c.*—Continued.

| No. | Name of claimant. | Date of filing claim. | Amount of claim. | Date of award. | Nature of award. | Amount of award. |
|---|---|---|---|---|---|---|
| 53 | | 1872. | | | | |
| 82 | Moses Taylor & Co. | Feb. 3 | 223,034 66 | | | |
| 83 | Estevan B. Valles | Feb. 3 | 100,000 00 | Dec. 20, 1873 | Dismissed by commission | |
| 84 | John A. Machado | Feb. 3 | 105,000 00 | | | |
| 85 | Henry T. Street | Mar. 5 | | Dec. 20, 1873 | Dismissed by commission | |
| 86 | Peter Glaub | Mar. 29 | 2,000 00 | Dec. 20, 1873 | do. | |
| 87 | Joseph Griffin | Mar. 30 | 25,000 00 | Apr. 15, 1875 | In money | 500 00 |
| 88 | Messrs. Waydell & Co. | Apr. 17 | 35,000 00 | | | |
| 89 | William A. Jones | Apr. 17 | 61,461 00 | | | |
| 90 | Joseph M. Alfaya | Apr. 17 | 85,849 00 | July 19, 1876 | Dismissed by umpire | |
| 91 | José Maria Ortega | Apr. 20 | 126,000 00 | Nov. 2, 1875 | do. | |
| 92 | Joseph M Placencia | Mar. 16 | | Dec. 20, 1873 | Dismissed by commission | |
| 93 | Hugh Johnston | June 1 | 25,000 00 | May 9, 1874 | do. | |
| 94 | Charles H. Campbell | June 3 | 15,000 00 | | Dismissed by umpire | |
| 95 | Augustin A. Arango | June 3 | 39,719 47 | | do. | |
| 96 | Youngs, Smith & Co. | June 3 | 33,998 50 | | In money; award by umpire | 13,600 00 |
| 97 | Danford Knowlton & Co. and others | Aug. 16 | 365,850 33 | | Dismissed by umpire | |
| 98 | John Francis Cahill | Aug. 27 | 70,050 00 | Jan. 8, 1876 | Dismissed by commission | |
| 99 | John Dolis | Oct. 19 | 36,037 00 | | do. | |
| | | 1873. | | | | |
| 100 | Vincent Nenninger | Feb. 15 | 300,000 00 | | do. | |
| 101 | José Francisco Carret *et al.* | Mar. 24 | 47,340 00 | | do. | |
| 102 | Felix Rister *et al.* | Mar. 24 | 49,516 65 | | do. | |
| 103 | Ramon de Zayas de Bazan | Mar. 25 | 41,000 00 | Feb. 25, 1876 | do. | |
| 104 | William S. Lynn | Apr. 17 | 180,500 00 | | | |
| 105 | William D. Foulke | Apr. 19 | 18,000 00 | Nov. 15, 1873 | Dismissed by umpire | |
| 106 | John E. Powers | May 4 | 12,000 00 | | | |
| 107 | John Emile Houard | Aug. 30 | 50,000 00 | | | |
| 108 | Charles Jemot | Aug. 30 | 140,000 00 | Apr. 8, 1876 | In money | 5,000 00 |
| 109 | William W. Cox *et al.* | Oct. 8 | 10,000 00 | | Dismissed by umpire | |

| | | | | | | |
|---|---|---|---|---|---|---|
| 110 | William W. Cox | Oct. 8 | 1,686 00 | | do. | |
| 111 | José M. Casanova | Oct. 8 | 75,000 00 | | | |
| 112 | Enrique Valiente | Oct. 29 | 56,674 39 | Apr. 8, 1876 | Dismissed by commission | |
| | | 1874. | | | | |
| 113 | Isaac Carillo y O'Farill | Feb. 20 | 110,000 00 | Jan. 13, 1875 | Dismissed by umpire | |
| 114 | Galatea Marrott | June 22 | 99,927 00 | | | |
| | | 1875. | | | | |
| 115 | Manuel Ant. Montejo | Apr. 9 | 542,500 00 | | | |
| 116 | V. Eugene Bennet | Aug. 7 | | | Dismissed by commission | |
| | | 1876. | | | | |
| 117 | Juan San Pedro | Feb. 29 | 50,000 00 | | | |
| 118 | Francisco Mateo Acosta y Foster | Mar. 11 | 216,481 61 | | | |
| 119 | Alfreda G. Compton | July 17 | 15,000 00 | | | |
| 120 | Francisco M. Ruiz | Sept. 22 | 200,000 00 | | | |
| | | 1877. | | | | |
| 121 | Joseph O. Wilson | July 26 | 30,000 00 | | | |
| 122 | Peneda & Portero | Oct. 23 | 20,000 00 | | | |
| 123 | Dolores Agramonta | Dec. 8 | 40,000 00 | | | |
| 124 | Rafael Casanova | | 150,000 00 | | | |
| | | 1879. | | | | |
| 125 | J. G. Delgado | May 31 | 427,398 00 | | | |
| 126 | Manuel J. de Rojas | July 5 | 2,192,088 84 | | | |
| 127 | Miguel Zaldivar | Aug. 19 | 400,000 00 | | | |
| 54 | | | | | | |
| 128 | Pablo Battle | Sept. 15 | 130,000 00 | | | |
| 129 | J. F. Machado | | 3,206 00 | | | |
| 130 | Danford Knowlton & Co. | Dec. 18 | 183,145 35 | | | |
| 131 | Knowlton & Co. and King & Co. | Dec. 18 | 65,906 81 | | | |
| | Total of claims | | $26,702,810 28 | | Total of awards exclusive of interest | $958,928 75 |

The clerk of the supreme court of the District of Columbia will please put this document in the transcript in the case U. S. *ex rel.* Angarica *v.* Bayard, Sec'y of State.

WM. A. MAURY, *Ass't Att'y Gen'l.*
EDWARD K. JONES, *Att'y for Relator.*

55 *Order to Issue Rule.*

Let the rule issue as prayed, returnable forthwith, the said time of return being fixed by consent of the Secretary of State.

24th November, 1885.

CHARLES P. JAMES,
*Asso. Justice.*

*Rule.*

(NOTE BY THE CLERK.—The above rule was not issued, the parties waiving its service and appearing voluntarily.)

56 *Answer of Thomas F. Bayard. Filed Nov.* 24, 1885.

In the Supreme Court of the District of Columbia, Sitting in General Term.

THE UNITED STATES *ex relatione* LUTZARDA ANGERICA DE LA RUA

*vs.*

THOMAS F. BAYARD, Secretary of State.

Mandamus.

The answer of Thomas F. Bayard, Secretary of State of the United States, to the petition against him filed in the said supreme court of the District of Columbia by the United States of America on the relation of Lutzarda Angarica de la Rua, executrix of Joaquin Garcia de Angarica, deceased.

57 This respondent, admitting the matters and things set forth and averred in the said petition, except as hereinafter excepted, answering, saith that it is not true, as stated in the third paragraph of the said petition, that the Spanish-American Claims Commission "duly awarded a judgment in favor of the said Joaquin Garcia de Angarica against the said Kingdom of Spain for the sum of $748,180, with interest at the rate of 6 per centum per annum from the 1st day of November, 1875, until paid;" but this respondent saith that an award or judgment for a like sum of money and for like interest was made and rendered by the said commission in favor of the United States of America, and that the said Joaquin Garcia de Angarica was no party to any proceedings at any time pending before the said Spanish-American Claims Commission, and, as a consequence, this respondent doth also deny that the said sum of money, with the interest thereon, was paid unto the Secretary of State of the United States to the use of or to be paid to the said Garcia de Angarica, as is averred in the fourth paragraph of the said petition, or that upon the said payment it became the duty of the Secretary of State to pay the same to the said petitioner's testator in satisfaction of any judgment or award, for this respondent doth aver that when the said money was received by the then Secretary of State it came

to his hands coupled with duties to the United States and possible duties to the Kingdom of Spain, which duties were in the one case and would have been in the other case paramount and superior to any duty in the premises to the said petitioner or her testator.

58 And this respondent, further answering, saith that the said petition proceeds upon a ground which wholly ignores certain grave international elements and considerations that entered into the claim of the petitioner's testator so soon as the Government of the United States began and assumed to urge and prosecute the same, and that thenceforth the said claim became, in contemplation of law, subject to the will of the Government of the United States and entirely beyond the control of the said petitioner's testator.

And this respondent, further answering, saith that the interest money demanded in the said petition as the accretion of a part of the said sum of money adjudged and awarded as aforesaid is the fruit of an investment of the said principal money by the Secretary of State, made in obedience to law and in the performance of a general statutory duty, and not for the use and behoof of the said petitioner's testator.

And this respondent, protesting that no agreement to pay the said petitioner or her testator the said interest money was made by the Secretary of State, as is averred in the said petition, doth deny that the Secretary of State could have made a valid agreement in that behalf.

And this respondent, further answering, saith that to place him under the stress of the writ of mandamus as touching the said

59 interest money would be subversive of the established principle that the Government of the United States does not pay interest to its citizens as damages for the detention of money.

And this respondent, further answering, saith, with all deference and respect, that, as the representative of the President of the United States in carrying out a treaty, he cannot hold the relation of trustee toward any citizen, saving in the larger sense that every public functionary is clothed with a trust, and that he cannot be controlled or directed in the performance of any such duty at the suit of any citizen.

And now this respondent, having fully answered, prays to be hence dismissed with his reasonable costs in this behalf sustained.

T. F. BAYARD,
*Secretary of State.*

WILLIAM A. MAURY,
*Assistant Attorney General, of Counsel for the Respondent.*

Subscribed and sworn to before me this 17th day of November, A. D. 1885.

JOHN J. CHEW,
*Notary Public.*

Agreement between the United States and Spain for the settlement of certain claims of citizens of the United States made by Daniel E. Sickles, Esq., envoy extraordinary and minister plenipotentiary of the United States at Madrid, and his excellency Señor Don Cristino Martos, minister of state of Spain, concluded February 12, 1871.

Memorandum of an arbitration for the settlement of the claims of citizens of the United States or of their heirs against the government of Spain for wrongs and injuries committed against their persons and property or against the persons and property of citizens of whom the said heirs are the legal representatives by the authorities of Spain in the Island of Cuba or within the maritime jurisdiction thereof since the commencement of the present insurrection.

1. It is agreed that all such claims shall be submitted to arbitrators, one to be appointed by the Secretary of State of the United States, another by the envoy extraordinary and minister plenipotentiary of Spain at Washington, and these two to name an umpire, who shall decide all questions upon which they shall be unable to agree; and in case the place of either arbitrator or of the
61 umpire shall from any cause become vacant, such vacancy shall be filled forthwith in the manner herein provided for the original appointment.

2. The arbitrators and umpire so named shall meet at Washington within one month from the date of their appointment, and shall, before proceeding to business, make and subscribe a solemn declaration that they will impartially hear and determine, to the best of their judgment, and according to public law and the treaties in force between the two countries and these present stipulations, all such claims as shall, in conformity with this agreement, be laid before them on the part of the Government of the United States, and such declaration shall be entered upon the record of their proceedings.

3. Each Government may name an advocate to appear before the arbitrators or the umpire to represent the interests of the parties respectively.

4. The arbitrators shall have full power, subject to these stipulations, and it shall be their duty, before proceeding with the hearing and decision of any case, to make and publish convenient rules prescribing the time and manner of the presentation of claims and of the proof thereof; and any disagreement with reference to the said rules of proceeding shall be decided by the umpire. It is undetstood that a reasonable period shall be allowed for the presentation of the proofs; that all claims and the testimony in favor of them shall be presented only through the Government of the United States; that the award made in each case shall be in writing, and, if indemnity be given, the sum to be paid shall be expressed in the gold coin of the United States.

5. The arbitrators shall have jurisdiction of all claims presented to them by the Government of the United States for injuries done to citizens of the United States by the authorities of Spain in Cuba since the 1st day of October, 1868. Adjudications of the tribunals in
Cuba concerning citizens of the United States, made in the ab-
62 sence of the parties interested or in violation of international law or of the guarantees and forms provided for in the treaty of October 27, 1795, between the United States and Spain, may be reviewed by the arbitrators, who shall make such award in any such case as they shall deem just.

No judgment of a Spanish tribunal disallowing the affirmation of a party that he is a citizen of the United States shall prevent the arbitrators from hearing a reclamation presented in behalf of said party by the United States Government; nevertheless, in any case heard by the arbitrators the Spanish Government may traverse the allegation of American citizenship, and thereupon competent and sufficient proof thereof will be required. The commission having recognized the quality of American citizens in the claimants, they will acquire the rights accorded to them by the present stipulations as such citizens.

And it is further agreed that the arbitrators shall not have jurisdiction of any reclamation made in behalf of a native-born Spanish subject naturalized in the United States if it shall appear that the same subject-matter, having been adjudicated by a competent tribunal in Cuba and the claimant having appeared therein, either in person or by his duly appointed attorney, and being required by the laws of Spain to make a declaration of his nationality, failed to declare that he was a citizen of the United States; in such case and for the purposes of this arbitration it shall be deemed and taken that the claimant by his own default had renounced his allegiance to the United States; and it is further agreed that the arbitrators shall not have jurisdiction of any demands growing out of contracts.

6. The expenses of the arbitration will be defrayed by a percentage to be added to the amount awarded. The compensation of the arbitrators and umpire shall not exceed three thousand dollars each; the same allowance shall be made to each of the two advocates representing, respectively, the two governments; and the arbitrators may employ a secretary at a compensation not exceeding the sum of five dollars a day for every day actually and necessarily given to the business of the arbitraton.

7. The two governments will accept the awards made in the several cases submitted to the said arbitration as final and conclusive, and will give full effect to the same in good faith and as soon as possible.

63 *Order Certifying Case to General Term.*

This cause is hereby, this 24th day of November, A. D. 1885, certified to the general term, to be there heard in the first instance.

CHARLES P. JAMES,
*Asso. Justice.*

*Court Proceedings.*

MONDAY, *October 5th*, 1885.

Proceedings before the supreme court of the District of Columbia, in general term, commencing on the first Monday, 5th day, of October, 1885.

Present: Chief Justice Cartter and Justices Cox, James, and Merrick.

* * * * * * *

TUESDAY, *November* 24, 1885.

Session resumed pursuant to adjournment.
Present: Chief Justice Cartter and Justice James.

THE UNITED STATES *ex relatione* LUTZARDA ANGERICA DE LA RUA
*vs.*
THOMAS F. BAYARD, Secretary of State. } At Law, No. 26471.

Argued by Edward K. Jones, for the relator, and by Mr.
64 Maury, assistant attorney general, for the defendant, and submitted to the court.

* * * * * * *

*Order Dismissing Petition, &c.*

MONDAY, *December* 7, 1885.

Session resumed pursuant to adjournment.
Present: Chief Justice Cartter and Justice James.

THE UNITED STATES *ex relatione* LUTZARDA ANGARICA DE LA RUA
*vs.*
THOMAS F. BAYARD, Secretary of State. } At Law, No. 26471.

Upon consideration of the matter of the plaintiff's petition, because it appears to the court here that mandamus is not the remedy applicable to the case stated in the plaintiff's petition, it is, therefore, hereby adjudged that the said petition be, and it is hereby, dismissed, and that the relator pay the cost of this proceeding.

65 *Opinion of Court in General Term. Delivered Dec.* 7, 1885.

Mr. Justice James delivered the opinion of the court.

This petition sets forth substantially that on February 12, 1871, an agreement was concluded between the American minister at Madrid and the minister of state of Spain for the settlement of certain claims of citizens of the United States on account of injuries committed by the authorities of Spain in the Island of Cuba; that, in pursuance of its terms, a commission, generally known as the "Spanish-American Claims Commission," was established, and the testator, Joaquin Garcia de Angarica, filed before it a claim against

the Spanish government, upon which there was duly awarded a judgment in his favor for the sum of $748,180.00; that Spain paid to the Secretary of State of the United States, to the use of the testator and to be applied to the satisfaction of that award, the full amount of said judgment, with interest thereon, in two payments, to wit, March 27, 1877, the sum of $404,939.62, and on October 8, 1877, the further sum of $418,191.61, making in the aggregate $823,131.23; that upon the receipt of said sums it became the lawful duty of the Secretary of State to at once pay the whole amount thereof in satisfaction of the award, but that, in making such payment, the Secretary actually withheld the sum of $41,129.74, claiming to retain the same until such time as the Spanish government should make provision for the payment of the expenses of the arbitration, in compliance with the following clause of the convention: "The expenses of the arbitration will be defrayed by a percentage to be added to the amount awarded; that such retention was wholly without authority of law, either by virtue of the agreement or of any statute or otherwise, and that the petitioner protested against it and duly demanded the payment of said sum of money, but that the said Secretary and his successors in office continued unlawfully to retain the same until the 12th day of February, 1885, when the precise sum of $41,129.74 was paid to petitioner; but the petitioner alleges that, at the time of receiving this retained sum, the then Secretary of State caused it to be invested in bonds of the United States, with the intent of paying the interest thereon earned during the period of retention, together with the principal sum, to the person entitled to receive the principal sum, and that said Secretary notified the testator of this intention in a certain circular letter, and repeated the same in a subsequent letter to petitioner's attorneys. It is alleged that the retained five per centum of testator's award stood invested in these securities from the time of its receipt from Spain until about the 9th day of February, 1885.

The remainder of the petition gives the history of petitioner's efforts to obtain payment to her of the interest earned on what she claims to be a fund in the hands of the Secretary of State belonging specifically to her and of the refusal of Mr. Secretary Frelinghuysen and of Mr. Secretary Bayard to account for such interest and their reasons for so doing.

The respondent denies that any award was made in favor of Angarica, but says that an award for a like sum was made in favor of the United States, and that Angarica was not a party to any proceedings at any time pending before the Spanish-American Claims Commission, and, as a consequence, denies that the moneys referred to were paid to the Secretary of State to the use of Angarica,
66 and claims that they came into his hands coupled with duties to the United States which were superior to any duty in the premises to the petitioner's testator; and that as soon as the Government of the United States assumed to urge and prosecute the testator's claim against Spain it became thenceforth, in contemplation of law, subject to the will of the Government of the United States and entirely beyond the control of the testator; and, further, that,

in investing the moneys arising from the award, the Secretary of State acted in the performance of a general statutory duty and not for the use and behoof of the testator. As to the alleged agreement of the Secretary of State to pay to the several claimants the interest accruing on such investments he denies that any such agreement was or could be made, and finally he claims that the United States is never bound to pay interest to its citizens for the detention of money.

The necessary ground of an application for the writ of mandamus against an executive officer is that it shall appear that he has been charged by law with the performance of a specific official duty to which the petitioner is entitled, and that he refuses to perform that duty. The petitioner in this case claims to have shown, in accordance with this rule, that the Secretary of State is charged with an official duty to pay over to her the moneys in question as part of a fund belonging to the estate of her testator, and that this is a duty as to which he has no discretion. We have therefore to consider, first, with what duties this executive officer is charged by law.

Section 202 of the Revised Statutes provides that "the Secretary of State shall perform such duties as shall from time to time be enjoined on or entrusted to him by the President relative to correspondences, commissions, or instructions to or with public ministers or consuls from the United States, or to negotiations with public ministers from foreign states or princes, or to memorials or other applications from foreign public ministers or other foreigners, or to such other matters respecting foreign affairs as the President of the United States shall assign to the Department, and he shall conduct the business of the Department in such manner as the President shall direct." This is the only law relating to the duties of that officer in matters of foreign intercourse.

Under this statute it is his duty, in the conduct of every matter which constitutes a part of "the business of his Department," to act "in such manner as the President shall direct," and it appears that every transaction connected with foreign intercourse which the President shall assign to the State Department is a part of its business in which he is so to act. If, then, the receipt from Spain and the payment over to the respective claimants of the moneys awarded by the commission are acts done by the Secretary of State in his official capacity—and it is only in such case that he could be subject to a writ of mandamus—it is because that matter has been made by the President a part of the business of his Department. It follows that this official duty must be performed "in such manner as the President shall direct." Now, it has been decided by the Supreme Court of the United States that the action of the heads of executive departments, in matters which the President is authorized to direct, must be presumed to have been directed by him. We must therefore presume that the Secretary of State has acted by the specific direction of the President in the decision complained of by the petitioner. Whatever might be thought of the propriety of such directions the Secretary has, in that case, done simply what the law required him to do. In other words, having been directed by the

President not to pay to the petitioner the interest derived from the investment of these moneys, it was, so far as he was concerned, his legal duty not to so pay them. It may be added that this presumption of direction by the President is not, in a transaction of such character and importance, merely a theory. As a matter of fact, such business is conducted with his actual concurrence.

It may be that a power and duty as to such payments, independent of the President's control, may be vested in the Secretary of State by the terms of a treaty, for a treaty would be the law
67 of the land as much as the statute to which we have referred. But this agreement between the American minister at Madrid and the Spanish minister of state was not a treaty, and its terms could not modify the operation of a statute even if they had been intended to do so. As a matter of fact, it contains nothing relating to any power or duty of the Secretary of State except a provision that he shall name one of the arbitrators. His official duty is governed, therefore, by the statute, and a refusal to perform a duty imposed by that statute has not been shown.

Another element to be considered in determining whether we are authorized to apply the remedy of mandamus is the nature of the petitioner's right. We are of the opinion that however plain the political obligation of this Government or of its executive may be to account to the individual citizen for moneys awarded in compensation of his injuries, and for any increment thereon, the right of the citizen is not of such a nature that it can be enforced by this remedy; nor, indeed, do we perceive that any judicial remedy for its enforcement can exist without further legislation.

When one nation treats with another on account of wrongs done to one of its citizens the transaction is wholly between the two nations. The injured citizen bears no relation in the proceedings to the nation on which the claim is made, and is in no sense a party to the adjustment, even though his own government assumes to make the reclamation for his benefit; but his own government may, in connection with the transaction, assume a direct relation with and obligation to him in respect to the indemnity obtained. Indeed, every nation owes to its citizen a duty to protect him against foreign injuries and to procure for him, when considerations of the common welfare do not prevent it, indemnity for those injuries; and when the state actually intervenes for the very purpose of obtaining such indemnity for him it recognizes that duty and assumes an obligation to see that he enjoys it. In such a case we conceive that the obligation is manifest, but in determining the remedy for its enforcement the question is, What is the nature of that obligation? Does it constitute a legal duty on the part of the state or of the executive who is authorized to perform it and establish a legal right on the part of the citizen in the sense of those terms which is employed by the courts in the administration of municipal law? Clearly it is not an obligation of contract. It arises from a relation which needs no help from contract and cannot be strengthened by contract—that is to say, from the very relation of government and citizen. It would seem, then, to be merely a part of the state's po-

litical obligations and to consist essentially of that general, though very binding, obligation of protection which, by its very origin and constitution, the state owes to the citizen. Such an obligation may be absolute without being enforceable; and we do not mean to intimate that it is less binding than the legal obligation of contract or than the obligation of an ordinary trust. If there can be any difference it is more binding, for nothing can equal the stringency and inevitableness of an obligation of public morality and good faith of the obligations of a community in its dealings with the individual citizen whom it has stripped of all means of compulsion. We intend, therefore, merely to say that, however strong this obligation may be in a political sense, it contains none of the elements of what is known to the courts as contract, and that much less can it be held by the courts that an indemnity obtained by the state for the benefit of an injured citizen becomes in a legal sense at once the property of that citizen or property held for his use. The phrases and analogies of municipal law are constantly found to be misleading in such matters. This transaction established in that sense neither a debt nor a trust nor any trustee. It does not appear, therefore, that the petitioner has such a right as can be enforced by legal remedies. Clearly it cannot be enforced by the writ of mandamus.

These conclusions are sufficient to dispose of the application before us, but, as we were invited by the course of the argument, as well on the part of the respondent—virtually of the Government—as on the part of the petitioner, to consider the actual predicament of this fund, we deem it proper to do so.

68 We observe that the respondent claims that the retained moneys were invested under the requirement of a general law, and he refers to section 3659 of the Revised Statutes. The meaning of this proposition seems to be that therefore the investment was not an act done by the executive in the exercise specifically of his powers in the management of a diplomatic reclamation, and that therefore the increment cannot be said to have been, as a matter of fact, devoted by executive action to the use of the claimants.

The section referred to provides that "All funds held in trust by the United States and the annual interest accruing thereon, when not otherwise provided by treaty, shall be invested in stocks of the United States bearing a rate of interest not less than five per centum per annum." This provision was taken from section 2 of the act of September 11, 1841 (5 Stat., 465), and it is necessary to look back to the original in order to ascertain its full meaning. The first section of the act of 1841 related to the Smithson fund. An earlier act, of July 7, 1838 (5 Stat., 267), had provided that the moneys arising from the bequest of James Smithson were thereby appropriated and should be invested by the Secretary of the Treasury in the stocks of States bearing not less than five per cent. interest, and that these stocks should be held by him "in trust for the uses specified in the last will and testament of the said Smithson until provision should be made by law for carrying the purpose of said bequest into effect," and that the annual interest on these stocks should be "in like manner invested for the benefit of said institution." This section was

repealed by the act of 1841, which provided instead that the Secretary of the Treasury should, until Congress should appropriate "said accruing interest to the purposes prescribed by the testator for the increase and diffusion of knowledge among men, invest said accruing interest in any stock of the United States," &c. Then the original form of section 2 was as follows: "That all other funds held in trust by the United States and the annual interest accruing thereon * * * shall in like manner be invested in stocks of the United States," &c. The words "in like manner" had the effect of requiring all investments within the statute to be made by the Secretary of the Treasury. Neither these words nor any equivalent are found in the revision; but, according to a well-settled rule, the omission is supplied by reference to the original act; and we hold that under section 3659 the trust moneys there referred to must be invested by the Secretary of the Treasury. We are of opinion, also, that in all cases within the statute the securities are also to be retained by him, inasmuch as he is to reinvest the accruing interest, and that they cannot be sold and the proceeds paid out, as was done in this case, without further authority of law.

It is apparent from these requirements that the statute relates only to a class of trusts which cannot be interfered with or disposed of by executive power without further legislation, and this construction is supported by contemporaneous facts and other statutes. At the time of the enactment of 1841 there existed certain treaties with the Indians, containing stipulations for the payment to them annually of interest upon the proceeds of land ceded by them, and it had already been provided, by the act of January 9, 1837 (5 Stat., 135), which is now embodied in the Revised Statutes as section 2096, that these funds should be invested in securities at not less than five per cent. interest. It was clearly for trusts of this definite character, established, as we have said, by law, that the act of 1841 proposed to establish a general system. This is especially indicated by the exception in that act of cases regulated by treaty. The reference is to these Indian treaty funds. We think, then, that the statute did not apply to the transaction in question, and it is evident that the executive did not propose to conform to its requirements. As the circular letter of the Secretary of State informed Mr. Angarica, the Department of State proposed to keep this reserve invested, and only temporarily, while trust funds under the statute were to be held by the Secretary of the Treasury and until disposed of according to the will of Congress. As the executive could not fail to know that he could not lawfully sell trust securities that were within the
69 statute and disburse the proceeds without legislative authority, it is plain that he assumed and decided to treat this fund as of a different character and wholly within executive control.

These considerations are important in determining what the intention and effect of the transaction actually were, and it is only for that reason that we have been careful to state them. We proceed to consider those questions.

We have said that a State owes to its citizen, when the common welfare does not prevent such intervention, a duty to procure for

him indemnity for foreign injuries, and that, when it actually intervenes for that purpose, it assumes an obligation to see that the indemnity enures to his benefit. The agreement with Spain expressly recognized this duty. It is entitled: "Memorandum of an arbitration for the settlement of the claims of citizens of the United States or of their heirs against the government of Spain for wrongs and injuries committed against their persons and property or against the persons and property of citizens of whom the said heirs are the legal representatives by the authorities of Spain in the Island of Cuba," &c. Although, as we have said, the individual claimant bears no relation as such to the foreign government in such an arbitration, his interest is here provided for by a plain declaration that, as between himself and his own government, the arbitration is in his behalf and for his benefit. In pursuance of this intention the last article of the agreement declares that "The two governments will accept the awards made in the several cases submitted to the said arbitrators as final and conclusive, and will give full effect to the same as soon as possible." On the part of the United States this included an engagement that the payments made on the awards should enure to the benefit of the claimants, and, inasmuch as it was not then foreseen that any omission or default would occur in providing for the expenses of the arbitration, the meaning of this engagement was further that the whole amounts of the several awards should go to them. We do not mean, however, to express any opinion as to the legitimacy of the temporary retention of five per centum of these amounts with reference to the unpaid expenses. The agreement is referred to only as one of the means of ascertaining the meaning of the steps which followed, and especially what was decided by the executive who had in charge the function of deciding. We find that the Secretary of State informed the claimants that five per centum of the awards would "be reserved for the present to meet the expenses of the commission until a payment to cover such expenses shall be made by Spain," and that in his report to the President, which the latter transmitted to the Senate, he said: "The reserve of five per centum may be regarded as provisional only," and, finally, that in his circular letter to the claimants he said: "It is hoped that no great delay will occur in receiving the payment from Spain which will liberate this reserve for expenses, and the Department will expect to keep this reserve invested in interest-bearing securities of the United States to cover the delay in the distribution to the claimants."

These expressions disclose the intention of the executive and determine its effect. This statement to the claimants means that notwithstanding the arrangement was provisional and might end in a permanent retention of the reserve, yet, in case it should be released, the investment should stand as one made in order to cover the loss suffered by them from the delay in paying the balance ultimately held to be due them; in other words, that it was provisionally an investment in trust for their benefit. This was not an "agreement" with the claimants, as the petitioner insists, nor was it, on the other hand, the announcement merely of a present intention; it was an

executive decision, made in the performance of a duty included in this executive intervention. As in the case of an ordinary legal and enforceable express trust, the nature of the transaction is defined by the party who originates it, so the nature and effect of this administrative transaction was defined and established to be at once in the nature of a provisional trust for the benefit of the claimants.

We assent, therefore, to the respondent's statement in his
70 letter of October 16, 1885 (set forth in the petition), and in his answer, that this reserve was a trust fund, but we hold that, instead of being a trust under the statute, it was a trust established by an act of executive discretion. We have already concurred, also, in the opinion stated by him in the same letter, that "it is *res judicata* that the Secretary of State has not discretionary power to dispose of the accumulations resulting from investments made in pursuance of the act of September 11, 1841," but we hold that the restrictions of that act do not apply to a trust contrived as merely a part of the management of a diplomatic intervention in behalf of a citizen, and that the executive was entirely at liberty to perform that trust completely by disposing of the whole of its proceeds; and it may be added that he clearly undertook to exercise this very power when Mr. Secretary Frelinghuysen, in February, 1885, paid over to the claimants that part of the proceeds of the trust fund which represented the principal sum invested. If the investment had actually been within the statute he could not lawfully have done this, nor would it be true that the respondent may, as he proposed to do in the letter referred to, "cause the accumulations to pass into the Treasury," inasmuch as the statute would require it to be reinvested and retained by the Secretary of the Treasury, and not confused with the general funds.

We conceive, then, that these accumulations cannot be withheld from the use declared in this executive trust without reversing the original executive decision and disregarding the effect of the executive action by which the transaction was moulded and defined. Of course, in case of subsequently discovered fraud or of plain mistake of fact or law, a later executive could not hesitate to treat the whole matter as an original question, notwithstanding a former decision; but in the absence of these conditions the settled practice of this Government has been, as the respondent stated in his letter to petitioner's attorneys of October 7, 1885, to treat the former executive action as conclusive; but the conclusiveness of the original action in this case stands on a far stronger ground than the rule which treats mere decisions as conclusive. It stands on the principle that a trust once established is not to be undone because the trustor afterwards disapproves of his own act any more than a contract or conveyance may. Although this was not of that class of trusts with which courts of equity deal, as we have already said, yet the principle which we have stated applies to it and governs its administration. When it was decided that this fund should no longer be reserved, the provisional element of the transaction determined, and the provisional trust became unconditional. According to the rule referred to, the increment incorporated in it has retained the

character of trust originally stamped upon it by the executive. As we have said, however, this trust is not enforceable, and the petition is accordingly dismissed.

71 *Appeal Bond.*

In the Supreme Court of the District of Columbia — the — day of ——, 188–.

THE UNITED STATES OF AMERICA on the Relation of LUTZARDA ANGARICA DE LA RUA
*vs.*
THOMAS F. BAYARD, as Secretary of State.
} Law. No. 26471.

In error.

Know all men by these presents that we, Lutzarda Angarica de la Rua, by Coudert Brothers, her attorneys, and Nathaniel Paige, are bound unto the above-named Thomas F. Bayard, as Secretary of State of the United States of America, in the sum of two hundred and fifty ($250.00) dollars, to be paid to the said Thomas F. Bayard, as Secretary of State aforesaid, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 3d day of September, 1887.

Whereas the above-named The United States of America on the relation of the said Lutzarda Angarica de la Rua has prosecuted a writ of error *from* the Supreme Court of the United States *to* the supreme court of the District of Columbia to reverse the judgment rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named The United States of America on the relation of Lutzarda Angarica de la Rua shall prosecute the said writ of error to effect, and answer all damages and costs if she shall fail to make good her plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

LUTZARDA ANGARICA DE LA RUA,
By COUDERT BROTHERS, [SEAL.]
*Att'ys.*
NATHANIEL PAIGE, [SEAL.]
*Washington, D. C.*

Sealed and delivered in presence of—
EDWARD K. JONES.

I assent to the approval of this bond.

WM. A. MAURY,
*Ass't Att'y Gen'l.*

Approved.
Sept. 29, '87.

WM. M. MERRICK, *A. J.*

72 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the chief justice and justices of the supreme court of the District of Columbia, Greeting:

Because in the record and proceedings as also in the rendition of a judgment in a plea which is in the said court before you, between The United States of America on the relation of Lutzarda Angarica de la Rua, as executor of Joaquin Garcia de Angarica, deceased, relator, and Thomas F. Bayard, as Secretary of State of the said United States, respondent, No. 26471, at law, a manifest error hath happened, to the great damage of the said relator, as by his complaint appears, and it being fit that the error, if any hath happened, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, therefore you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the United States, this 29th day of September, in the year of our Lord 1887, and of the Independence of the United States the one hundred and twelfth.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk.*

DISTRICT OF COLUMBIA, *To wit:*

To Thomas F. Bayard, Secretary, &c.:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein The United States of America *ex rel.* Angarica is relator and you are respondent, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, so that speedy justice be done the parties in that behalf.

Witness E. F. Bingham, chief justice of the said supreme court of the District of Columbia.

E. F. BINGHAM,
*Chief Justice.*

73 Service of the within writ of error and citation is hereby admitted this day of 3d October, 1887.

WM. A. MAURY,
*Ass't Att'y Gen'l and Counsel for Defendant in Error.*

74 AUTHENTICATION OF RECORD.

*Clerk's Certificate.*

CLERK'S OFFICE, SUPREME COURT OF THE DISTRICT OF COLUMBIA.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 6th day of October, 1887.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk*,
By W. S. WILLIAMS,
*Assistant Clerk.*

*Justice's Certificate.*

I, E. F. Bingham, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 6th day of October, 1887.

E. F. BINGHAM, [SEAL.]
*Chief Justice.*

*Clerk's Certificate to Justice's Official Character.*

I, R. J. Meigs, clerk of said court, hereby certify that E. F. Bingham, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 6th day of October, 1887.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk.*
By W. S. WILLIAMS,
*Assistant Clerk.*

[Endorsed:] Authentication of record.

Endorsed on cover: District of Columbia supreme court. No. 1241. The United States *ex rel.* Lutzarda Angarica de la Rua, executrix of Joaquin Garcia de Angarica, dec'd, plaintiff in error, *vs.* Thomas F. Bayard, Secretary of State. Filed October 17, 1887.